

City of Berkeley



LEGAL DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6380

August 18, 1982

TO: BOARD OF ADJUSTMENTS


FROM: NATALIE E. WEST, City Attorney

SUBJECT: REGULATIONS IMPLEMENTING THE ELMWOOD COMMERCIAL
RENT STABILIZATION AND EVICTION PROTECTION ORDINANCE
(MEASURE I)

In accordance with the time table and procedure adopted by the Board sub-committee on Measure I, enclosed are proposed regulations further defining allowable maintenance and operating expenses and capital improvements (Sections 530 and 531 respectively). All but one of the remaining regulations establish the procedure by which petitions will be heard by the Board. A proposed form petition is attached. Finally, Section 1351 is necessary to clarify an ambiguity in the ordinance regarding leases entered into between October 2, 1980 and October 1, 1981, since Section 13(b) of the ordinance requires an immediate reduction in rent based upon the Consumer Price Index, but is silent as to if, when and how rent can be raised after such a reduction in rent. The proposed regulation would clarify this ambiguity by providing that future rent increases would be governed by the terms of the existing lease except that any such increases may not exceed the percentage increase in the Consumer Price Index for the period since the prior rent was established.

Since the application of the ordinance to various leases has been a source of some confusion, below we attempt to further explain the issue:

1. Units with leases executed after October 1, 1981 are subject to all the provisions of the ordinance, i.e., their present rent cannot exceed the base rent for the unit plus any "allowable adjustments" incurred since the date the base rent was established.
2. Units with leases executed on or before October 1, 1981 are not subject to the ordinance until their leases expire except for leases under No. 3 below.
3. Rental units with leases executed between October 2, 1980 and October 1, 1981 will have their rents determined by the terms of the lease. However,

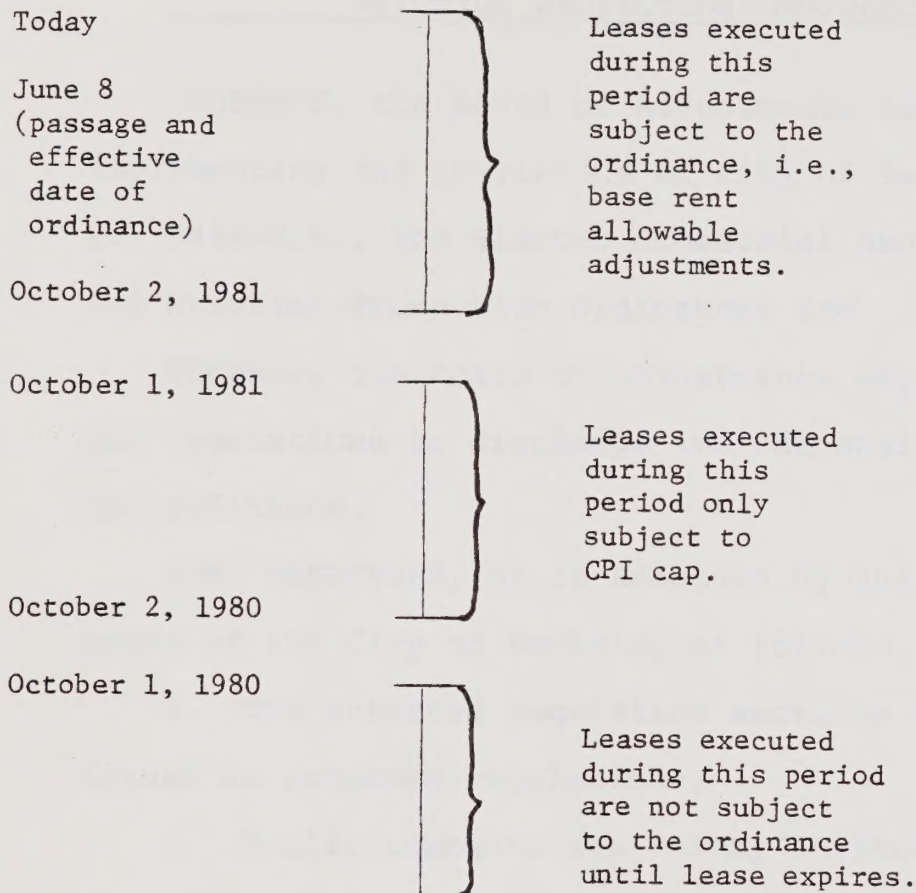


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such rents will be "capped" by increases in the Consumer Price Index for the corresponding period.*

This application of the ordinance to existing leases is illustrated graphically below:



(The graph moves forward through time as you go up vertically)

A cumulative index of all regulations submitted to the Board for issuance as proposed regulations is attached, preceding the proposed regulations themselves.

Recommendation

It is recommended that the Board adopt the attached resolution which:

1. Formally issues the attached regulations of the Board;
2. Invites written public comments to be filed with the Legal Department on or before September 13, 1982 at 4:30 PM; and
3. Requires that the attached Public Notice of the regulations be published in the Berkeley Gazette.

*

This term is defined by the ordinance as the All Items Consumer Price Index for All Urban Consumers, San Francisco-Oakland, California as published by the United States Department of Labor, Bureau of Labor Statistics. It is published monthly and will be available at the Berkeley Public Library.

BOARD OF ADJUSTMENT RESOLUTION ISSUING PROPOSED
REGULATIONS IMPLEMENTING ORDINANCE NO. 5468-N.S.
THE ELMWOOD COMMERCIAL RENT STABILIZATION AND
EVICTON PROTECTION ORDINANCE

WHEREAS, the Board of Adjustments is charged with implementing the provisions of City of Berkeley Ordinance No. 5468-N.S., the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance; and

WHEREAS, the Board of Adjustments may issue rules and regulations to discharge its responsibilities under the ordinance.

NOW, THEREFORE, Be It Resolved by the Board of Adjustments of the City of Berkeley as follows:

1. The attached regulation sections are hereby issued as proposed regulations;
2. Public comments are hereby invited but must be in writing and must be received by the Legal Department on or before September 13, 1982, at 4:30 p.m. in order to be considered;
3. The attached Public Notice of these proposed regulations must be published in the Berkeley Gazette.

CUMULATIVE INDEX OF PROPOSED REGISTRATIONS ISSUED
(August 23, 1982)

<u>Date Issued</u>	<u>Section No.</u>	<u>Subject</u>
8/9/82	400	Definitions
8/23/82	530	Maintenance and Operating Expenses
8/23/82	531	Capital Improvements and Attached Amortization Schedule
8/9/82	571	Notice of Prevailing Rent
8/9/82	572	Notice to New Tenants
8/9/82	573	Notice of Rent Increases/ Allowable Adjustments
8/23/82	850	Right to Petition
8/23/82	851	Time to Petition
8/23/82	852	Filing of Petitions
8/23/82	853	Subpoenas
8/23/82	854	Hearing By Board
8/23/82	855	Disqualification of Interested Board Member
8/23/82	856	Evidence
8/23/82	857	Conduct of Hearing
8/23/82	858	Decision by the Board
8/23/82	859	Hearing Record
8/23/82	1351	Existing Leases

Section 530 - Maintenance and Operation Expenses

- (a) Maintenance and operating shall include all reasonable maintenance and operating expenses except as provided in sub-section (b) below.
- (b) Maintenance and operating expenses shall not include the following:
 - (1) avoidable expense increases since the end of the period used for determining base rent or since the last allowable adjustment, whichever is later;
 - (2) mortgage principal or interest charges on a loan where such increased charges result from a larger loan being taken on the property (as contrasted with increased charges resulting from increases in prevailing rates of interest), whether due to re-financing by the landlord or purchase financing by a new landlord;
 - (3) any penalties, fees, damages, or interest assessed or awarded for violation of the Ordinance or these regulations;
 - (4) legal, accounting or filing fees or other costs incurred in connection with any Board of Adjustments proceeding or any court action brought pursuant to the ordinance;
 - (5) organization or association dues or fees;
 - (6) legal or other costs for any evictions;
 - (7) depreciation of the property;
 - (8) expenses for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for

damages, agreed upon payments, or any other method.

- (c) Any non-recurring expense shall be amortized over a reasonable period of time, to allow the expense to be recovered during that period. After that time, the rent ceiling shall automatically be adjusted downward by the amount of the upward rent ceiling adjustment attributable to that expense.

Section 531 - Capital Improvements

- a) Purpose. The purpose of this Section is to ensure that the costs of capital improvements are amortized over a reasonable period of time and are paid for by all tenants who benefit from them.
- b) Capital Improvement. A capital improvement shall be any improvement to a unit or property which has a useful life of more than one year and a direct cost of \$100 or more per unit affected.
- c) Policy. The rent ceilings for a unit or property may be adjusted to reflect the amortized cost of planned or completed capital improvements to the unit or property, where such capital improvements:
 - (1) are necessary to bring the unit or property into compliance or maintain compliance with applicable local code requirements affecting health and safety, provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased property damage and deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement; or
 - (2) are provided by the landlord in good faith to primarily benefit the tenant(s). There shall be a rebuttable presumption that a specific capital improvement is so provided if it has specifically been approved in writing by tenants in a majority of the units affected.

Section 531 - Continued

- d) Amortized Cost. The annual amortized cost of a capital improvement shall be calculated according to the following formula: the reasonable cost of the capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement.
- e) Cost of Financing. The cost of financing a capital improvement shall be the actual and reasonable amount of interest and other charges paid to the lender in connection with a loan taken to finance the capital improvement.
- f) Imputed Financing. If a landlord has financed the capital improvement with her/his own funds, and the improvement costs at least \$1000, or at least \$250 per unit affected, the Cost of Financing shall be deemed to be the amount of financing costs the landlord would have incurred had the landlord financed the capital improvement with a three year loan (or a loan for the period of the useful life of the improvement, whichever is less) at an interest rate equal to the average rate for 26-week U.S. Treasury Bills for the most recent calendar quarter preceding the filing of the petition.
- g) Amortization Schedule. The cost of a capital improvement shall be amortized according to a schedule to be established by the Board, unless there is a specific finding that a different time period is more appropriate in a particular instance. For capital improvements not listed in the schedule, the Board shall determine a reasonable amortization period.

Section 531 - Continued

- h) Future Improvements. In order to encourage necessary capital improvements, a landlord may petition for an upward rent adjustment based upon the anticipated future cost of a capital improvement. If the adjustment is granted in whole or in part, it shall not take effect until the capital improvement is completed, and its actual cost and completion is documented to the Board. Adjustments under this subsection shall not be made for anticipated costs for ordinary repairs and maintenance.

BOARD OF ADJUSTMENTS
CAPITAL IMPROVEMENTS
AMORTIZATION SCHEDULES

Pursuant to Board Regulation Section 531 the following Amortization Schedule is hereby established. The amortization periods in this schedule shall apply unless the Board makes a specific finding that a different time period is more appropriate in a particular instance.

<u>IMPROVEMENT</u>	<u>YEARS</u>
Air Conditioner	10
Appliances	
Dishwasher	5
Dryer	7
Fans	10
Garbage Disposal	5
Refrigerator	10
Stove	10
Washing Machine	7
Water Heater	5
Cabinets	10
Carpentry	10
Ceiling	10
Doorbells	10
Doors	10
Dumpster	10
Electrical (light) fixtures	10
Electrical wiring	15
Elevator	15
Fencing	10
Fire Alarm System/Smoke Detector	5
Fire Escape	10

<u>IMPROVEMENT</u>	<u>YEARS</u>
Flooring	
Hardwood	10
Linoleum	5
Tile	8
Carpet	5
Foundation	10
Furniture (bed, table chair, bureau, couch)	5
Gates	10
Gutters, downspouts	10
Heating (gas, electric, central system)	10
Insulation, weather-stripping	10
Landscaping (planting, sprinklers)	10
Locks	5
Mailboxes	10
Masonry	10
Plumbing - fixtures	7
pipes	10
Painting	4
Patio, porch, deck	10
Pump (sump)	10
Paving (asphalt, cement)	10
Plastering	10
Roofing	10
Security system, intercom	10
Siding	10
Solar energy equipment	10
Stairs, steps	10
Wallpaper	5

<u>IMPROVEMENT</u>	<u>YEARS</u>
Walls	10
Windows	5

850 - Right to Petition

Any landlord, tenant, interested party or neighborhood organization may petition the Board of Adjustments for resolution of any dispute, or question concerning the application or interpretation of the ordinance, provided however that the Board of Adjustments shall not re-hear cases involving the application of the ordinance to particular facts unless it is established that the parties to the prior hearing on these issues failed to make a good faith attempt to raise all the relevant facts and considerations at the prior hearing or that other good cause exists for such a re-hearing.

Section 851 - Time to Petition

- (a) A petition to determine the validity of a particular rent charged shall be filed within 60 days of:
 - (i) the written notice of a rent increase, required by Section 573 if the petition seeks a determination as to the validity of the increase; or
 - (ii) the written notice of the prevailing rent required by Section 572 if the petition seeks a determination of the validity of the rent charged at the time the ordinance became effective; or
 - (iii) the written notice to a new tenant required by Section 572 if the petition seeks a determination as to the validity of the rent charged such a tenant.
- (b) The time within which an interested party or neighborhood organization may petition the Board shall be 60 days from when copies of notices required by Sections 571, 572 or 573 were filed with the Board.

Section 852 - Filing of Petitions

- (a) A person seeking a determination from the Board of Adjustments as to the validity of rent charged or proposed to be charged shall complete a petition on forms provided by the Board of Adjustments to which shall be attached all supporting documents to be relied on by the petitioner at the hearing. An original and ten copies of the petition and attachments shall be filed with the Board of Adjustments along with a declaration under penalty of perjury that a copy of the petition and attachments was served on each adverse party by certified mail and the filing fee set by the Board. In the case of a landlord petition, the tenant of each affected unit shall be deemed the adverse party. In the case of a tenant petition, the landlord of the affected unit shall be deemed the adverse party. In the case of a petition by an interested party or neighborhood organization, both the landlord and the tenant of the affected unit shall be deemed the adverse party. A copy of the proof of service shall be attached to the copy of the petition mailed to the adverse party.
- (b) Within 30 days of the date of the mailing of such a notice the adverse party shall file a response to the petition to which shall be attached all supporting documents to be relied on at the hearing by the respondent. An original and 10 copies of the response shall be filed with the Board of Adjustments along with a declaration under penalty of perjury that a copy of the response and attachments was served on the party filing the petition.

Section 852 - (Continued)

- (c) Within 30 days of receipt of a satisfactorily completed petition and response, the case shall be set for hearing.

CITY OF BERKELEY

ELMWOOD COMMERCIAL RENT
STABILIZATION AND EVICTION
PROTECTION PROGRAM
2180 Milvia Street
Berkeley, California 94704
644-6

(LOGO)

FOR STAFF USE ONLY

Date Filed: _____

APPEAL/REVIEW OF
PREVAILING RENT
(Form No. _____)

I. This petition is to appeal/review a rent level at the following property:

II. Petitioner is

A. ☐ Tenant _____
(name)

(mailing address if different from above)

B. ☐ Owner/Manager _____
(name)

(mailing address if different from above)

C. ☐ Interested Party _____
(name)

(mailing address)

I have an interest in the rents which prevail at
this commercial unit because:

III. This appeal/review concerns a rental unit:

- A. ☐ for which there is no existing lease.
- B. ☐ which is subject to an existing lease which was executed on or after October 2, 1981 and thus the unit is subject to provisions of the ordinance regarding base rent and allowable adjustments.
- C. ☐ which is subject to a lease which was executed on or before October 1, 1980 and thus is not subject to the rent limits of the ordinance until the base rent expires.
- D. ☐ which is subject to a lease executed between October 2, 1980 and October 1, 1981 and thus, the rents which can be charged under the lease, cannot exceed certain ceilings which are tied to the Consumer Price Index. (Fill out Question if you checked the box.
- E. ☐ Other (explain) _____

_____.

IV. This petition is being filed to appeal/review:

- A. ☐ a notice of prevailing rent, which was served on the tenant by:
 - 1. ☐ personal delivery on _____
date
 - 2. ☐ certified mail on _____
date
and filed with the Board on _____
date
- B. ☐ a notice of rent increase which was served on the tenant by:
 - 1. ☐ personal delivery on _____
date
 - 2. ☐ certified mail on _____
date
and filed with the Board on _____
date
- C. ☐ a notice to a new tenant which was served on the tenant by:
 - 1. ☐ personal delivery on _____
date
 - 2. ☐ certified mail on _____
date
 - 3. ☐ the new tenant executed the lease on _____.

COPIES OF THESE NOTICES MUST BE ATTACHED TO PETITION

D. ☐ Other (explain) _____

_____.

V. The questions to be resolved on this appeal/review are:

- A. ☐ whether the base rent for a unit was properly computed.
(Fill out Section VI if you check this box)
- B. ☐ whether the difference between the base rent and the prevailing rent constitutes an allowable adjustment.
(Fill out Section VII if you checked this box)
- C. ☐ whether a rent increase is based on allowable adjustments.
(Fill out Section VII if you checked this box)
- D. ☐ whether rent levels authorized by a lease executed between October 2, 1980 and October 1, 1981 were properly limited to corresponding increases in the Consumer Price Index.
(Fill in Section VIII if you checked this box)

VI. Base Rent (Fill this section out only if your appeal/review relates to the way in which base rent was computed, i.e. you checked IV(A) above)

The amount of the base rent according to the notice served on the tenant is \$ _____ per _____ . It was
(time period - e.g. month)

computed by the following method:

- A. ☐ Rent in effect on October 1, 1981. (Section 5(b))
- B. ☐ Last rent under lease in effect on October 1, 1981 which called for varying rent levels (e.g. rents escalating with Consumer Price Index) (Section 5(b)(i)).
- C. ☐ Gross sales method. (Section 5(b)(ii))
- D. ☐ Rent had not been raised for _____ years prior to June 8, 1982 and therefore the base rent was increased by 5% for each year of no increase for a total increase of _____ % to \$ _____.
(Section 5(b)(iii)).
- E. ☐ Other (explain) _____

_____.

This appeal/review covers the manner in which base rent is set and the issues are described below:

_____.

VII. Allowable Adjustments (Fill in this section only if your appeal/review relates to whether a rent increase or rent excess over base rent is an allowable adjustment)

The question to be resolved on this appeal/review relates to:

- A. ☐ whether the amount by which the prevailing rent exceeds the base rent is an allowable adjustment.
- B. ☐ whether the amount by which the new rent exceeds the old rent prior to the rent increase constitutes an allowable adjustment.
(If you checked VII A or B, answer the following questions)

1. ☐ the present rent at the unit is \$ _____
per _____.

2. ☐ the base rent is \$ _____ per _____
was established for the period ending _____.

3. ☐ the rent has been increased to \$ _____
per _____ effective _____
from \$ _____ per _____ date _____ the
old rent, which was established on _____ date _____.

4. ☐ The Board is asked to resolve questions relating to the following issues under the following section of the ordinance.

a. ☐ increases in maintenance and operating expenses: (explain issue) _____

b. ☐ increases in property taxes and/or fees in connection with the property (explain issue) _____

c. ☐ increased costs for capital improvements (explain issue) _____

- d. ☐ increases in allowable _____
financing costs (explain issue) _____

- e. ☐ the manner in which the cost was allocated
to the unit (explain issue) _____

- f. ☐ Other _____

VIII. Leases between October 2, 1980 and October 1, 1981

(Fill this section out only if your appeal/review relates to whether rent levels under a lease executed between October 2, 1980 and October 1, 1981 were limited to increases in the Consumer Price Index.)

- A. Date lease executed: _____
- B. Present rent: (date _____) \$ _____
- C. Last rent prior to execution of lease: (date established _____)
\$ _____
- D. Difference between B & C: \$ _____
- E. % increase $\frac{(B-C \times 100)}{C} =$ _____ %
- F. % increase in Consumer Price Index* for period between date of
B & date of C = _____ %
- G. Difference between F & E = _____ %
- H. Correct rent = $C + (C \times G) = +$ _____

(Use All Items Consumer Price Index for All Consumer; SF-Oakland, CA; indicate index number for closest publication date. This index is published every month for the SF-Oakland Metropolitan Area and is available at the Reference Desk of the Berkeley Main Library - 644-6648)

ATTACHED TO THIS PETITION ARE ALL SUPPORTING DOCUMENTS AND
NOTICES RELEVANT TO THIS PETITION AND A DECLARATION UNDER
PENALTY OF PERJURY THAT THE ADVERSE PARTY WAS SERVED. I
UNDERSTAND THAT I WILL NOT BE ABLE TO INTRODUCE DOCUMENTS
AT THE HEARING AND THAT I COULD HAVE SUBPOENAED ANY
DOCUMENTS TO WHICH I DID NOT OTHERWISE HAVE ACCESS.

Dated:

Signature

Section 853 - Subpoenas

The Board may by subpoena, issued by its staff under its name, require either party or other person to provide any books, records, papers, or other evidence deemed relevant to the petition or that any witness appear and testify. Application for a subpoena for records may be made prior to the filing of a petition but, in any event, must be supported by a declaration under penalty of perjury which states all of the following:

- (1) a description of the documents sought;
- (2) the contents of the documents sought and the manner in which are are relevant to a pending or prospective petition before the Board; and
- (3) if a petition has not yet been filed, that the documents are necessary to the filing of the petition.

Section 854 - Hearing By Board

All hearings shall be conducted by the Board of Adjustments sitting en banc, which shall have the following powers:

- (a) to administer oaths and affirmations;
- (b) to grant requests for subpoenas and to order the production of evidence;
- (c) to rule upon offers of proof and receive evidence;
- (d) to regulate the course of the hearing and rule upon requests for continuances;
- (e) to call, examine, and cross-examine witnesses, and to introduce evidence into the record;
- (f) to make and file decisions on petitions in accordance with this Chapter;
- (g) to take any other action that is authorized by this Chapter.

Section 855 - Disqualification of Interested Board Member

- (a) No member of the Board of Adjustments shall take part in any hearing on a petition in which she/he has a personal financial interest in the outcome (such as being the landlord of or a tenant residing in, the property that is involved in the petition), or a personal bias for/against any party.
- (b) Board members shall disclose to all parties any prior communications with a party concerning the subject of the petition as well as any possible or apparent personal Financial interest or personal bias.
- (c) Any Board member may disqualify himself or herself at any time. In addition, any party may file a written request for disqualification, stating the grounds with the Board Chairperson at least 72 hours prior to the hearing. Any such request shall be ruled upon prior to the taking of any evidence at the hearing.

Section 856 - Evidence

The Board need not conduct the hearing according to the technical rules of evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of any common law or statutory rule which might exclude such evidence in court proceedings provided however that the decision of the Board as to a material issue of fact may not be based solely on inadmissible hearsay.

Section 857 - Conduct of Hearing

- (a) The party with the burden of proof on the issues to be determined shall be required to present his or her case first irrespective of whether such party was the petitioner.
- (b) Each party shall have the right to present testimony and to confront and cross-examine adverse witnesses.
- (c) No new documentary evidence shall be presented at the time of the hearing except upon a showing of good cause, and upon the granting of a continuance to the adverse party for a reasonable time if requested.

Section 858 - Decision by the Board

- (a) The decision of the Board shall be in writing and shall be rendered within 45 days of the date of the hearing and shall be mailed to the parties.
- (b) If the Board finds a rent level to be in excess of the limits imposed by the ordinance, it shall adjust the rent downwards effective 30 days from the date of the mailing of the notice. Such adjustment shall provide for and schedule reimbursement to the tenant for any overpayments in rent.
- (c) The decision of the Board shall be final and binding within 30 days of the date it is mailed but may be reviewed by a court of competent jurisdiction pursuant to Code of Civil Procedure Section 1094.5.

Section 859 - Hearing Record

The hearing before the Board shall be tape recorded. The tape recording shall be transcribed upon the request of any party who posts in advance the estimated cost of the transcription. Either party, may provide, at his or her own expense, a reporter to transcribe the hearing. The official record of the hearing shall include the petition, the response thereto, the decision of the Board and a transcript of the hearing.

Section 1351 - Existing Leases

- (a) Rent in rental units with leases executed on or before October 1, 1981 shall have their rent governed by the terms of the lease until they expire except as provided in sub-section (b) below.
- (b) Leases executed on or after October 2, 1980 up to and including October 1, 1981 shall be subject to the following limitations:
 - (i) if the difference between the rent at the time this regulation becomes effective and the last rent in effect prior to the execution of the lease exceeds the increase in the Consumer Price Index for the period from the date the prior rent was established and the present time, the rent will be reduced to the amount of the prior rent plus such percentage increase in the Consumer Price Index.
 - (ii) thereafter the rental unit subject to such lease shall have its rent governed by the terms of the lease, provided however that any increase in rent authorized by the lease over a specific period shall not exceed the increase in the Consumer Price Index for the corresponding period.

PUBLIC NOTICE

The Board of Adjustments has issued proposed regulations which define allowable maintenance and operating expenses and capital improvements, establish certain ceilings on rents authorized by leases executed between October 2, 1980 and October 1, 1981 and establish procedures for considering petitions. Copies of the regulations may be obtained from the Legal Department, 2180 Milvia Street, Fifth Floor, Berkeley, California. Public comments on the proposed regulations must be in writing and must be received in the Legal Department by 4:30 p.m. on September 13, 1982, in order to be considered. If you have questions, you may call the City Manager's Office, 644-6580, during business hours.

City of Berkeley



LEGAL DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6380

September 23, 1982

To: Board of Adjustments

From: NATALIE E. WEST, City Attorney

Subject: ADOPTION OF REGULATIONS IMPLEMENTING THE ELMWOOD
COMMERCIAL RENT STABILIZATION AND EVICTION PROTECTION
ORDINANCE ("MEASURE I") AS REVISED AFTER PUBLIC COMMENT

I. PURPOSE OF BOARD OF ADJUSTMENTS SPECIAL MEETING

The special meeting of the Board of Adjustments set for September 29, 1982 has been called to adopt regulations implementating Measure I. Two sets of proposed regulations were issued on August 9, and 23, 1982, respectively, and written public comments were solicited. The regulations attached to this memorandum, (Exhibit "F") have been revised in light of public comment and new concerns which came to light in the course of drafting both the regulations and various forms. These are discussed in another section, below.

II. BACKGROUND

Under Measure I the Board of Adjustments is charged with developing regulations which establish procedures for resolving disputes concerning the application of the ordinance and standards to apply in resolving these disputes. These disputes can be said to fall into two major categories which are briefly described below:

- (A) Maintenance of Net Operating Income (or "MNOI") Disputes. In essence the ordinance follows an approach which allows a landlord to maintain his or her net operating income in the base rent period. In other words, a landlord may raise rent only if, and to the extent, his or her costs go up since the end of the period used for calculating base rent. These increases in periodic costs are called "allowable adjustments". The manner of calculating base rent will vary based on the type of landlord tenant relationship. In the case of a lease entered into on January 1, 1981 which expires on December 1, 1982, the base rent will be the last rent authorized by that lease and increases in rent after December 1, 1982 will have to be based on increases in periodic costs incurred after that date. A more detailed description of the application of the ordinance to leases is set out in another section of this memorandum.

- (B) Disputes Over Whether The Landlord Is Receiving A Reasonable Rate of Return.

The ordinance also requires the Board of Adjustments to issue regulations which permit a landlord to obtain an "extraordinary rent increase" if the MNOI approach does not result in giving him or her a constitutionally sufficient "fair and reasonable rate of return on investment." One major difference between "extraordinary rent increases" and "allowable adjustments" is that the landlord must seek the permission of the Board prior to imposing the former. In the latter case, the ordinance relies on the ability of the tenant to challenge a particular increase by virtue of detailed notice to ensure that the rent levels charged are legally permissible.

Developing regulations in the area of fair and reasonable rate of return is a difficult and lengthy process. Thus, it was determined by the Board of Adjustments' sub-committee on Measure I that regulations in the area of MNOI disputes should not await development of regulations on fair and reasonable rate of return. Thus, the regulations submitted for adoption by the Board related only to disputes in area (A) above.

III. THE APPLICATION OF THE ORDINANCE TO LEASES

The ordinance treats leases in three different ways based upon when the leases were executed. Rents under leases executed most recently are subject to the most stringent regulation. This application is illustrated graphically below.

Today	)	Leases executed during this
	)	period are subject to the
June 8 (passage and effective	)	ordinance, i.e. the rent
date of ordinance)	)	charged cannot exceed the
	)	base rent plus allowable
October 2, 1981	)	adjustments.
)	
October 1, 1981	)	Leases executed during this
	)	period are only subject to
	)	CPI cap on the rents
	)	authorized by the lease.
October 2, 1980)	
)	
October 1, 1980	)	Leases executed during this
	)	period do not have their
	)	rents regulated by the ordinance
	)	until the lease expires or
	)	until any renewal lease expires,
	)	if the parties have a right to
Year 1	)	renew.

(The graph moves forward through time as you go up vertically.)

IV. THE PROCESS OF ISSUING REGULATIONS.

The regulations submitted for final adoption were developed in the following manner:

- Step 1: A draft developed by staff was submitted to the Board of Adjustments Sub-Committee on Measure I ("Sub-Committee").
- Step 2: The draft as revised after comments by the Sub-Committee was submitted to the Board of Adjustments ("Board") for issuance as proposed regulations.
- Step 3: The Board issues proposed regulations and invites written public comment within two weeks. The public is notified by publication and by postcards.
- Step 4: The staff revisions of the regulations are submitted to the Sub-Committee along with a copy of the written public comments received.
- Step 5: The regulations as revised after comments by the Sub-Committee are submitted to Board for final adoption at public hearing. The public is notified by publication and postcard of the time and place of the hearing and of the fact that the copies of the staff report will be available at city offices, the main library and the Claremont branch library.

V. THE REVISED REGULATIONS

An analysis of the public comments received and the extent to which these comments were incorporated is attached to this memorandum as "Exhibit E". The copy of the comments received are attached as Exhibits "B" (letter from Walter Wright dated 8/23/82 in response to issuance of proposed regulations 400, 571, 572, and 573) and "D" (letter from Walter Wright and Harold Brandel dated 9/7/82 in response to issuance of remaining proposed regulations on 8/23/82). The letter from Manuela Scott dated 8/25/82 responding to Mr. Wright's letter of 8/23/82 is attached as Exhibit "C".

In addition to the changes described in the Analysis, (Exhibit "E") the other two major changes in the regulations are that the notices prescribed by the regulations are required to be given on the forms supplied by the Board which are far more detailed than the ones originally proposed. The rationale for this change was two-fold. Firstly, the Ordinance relies on a tenant to challenge illegal rent levels and thus, for the most part, it will be the tenant who petitions the Board for a hearing. In order for the issues at the hearing to be clearly defined, it is essential that the tenant receive adequate information in order to determine whether the rent charged is legally permissible. Secondly, since some the provisions of the ordinance are complex, the forms serve the purpose of assisting a landlord in determining whether the rent levels he or she proposes to charge are permissible.

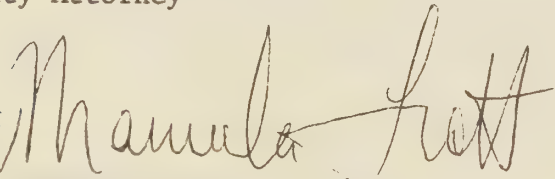
The other major change is to provide for an administrative order of rent roll-back in order to ensure that tenants who rely on Board regulations are not subjected to eviction for non-payment of rent.

V. RECOMMENDATION

It is recommended that the Board adopt the attached resolution (Exhibit "A") which would:

- (a) Adopt the attached regulations.
- (b) Set a petition filing fee of \$100 for the first unit, and \$20.00 for each additional unit in the same building which will be reviewed at the end of six months.
- (c) Authorize the staff to make any changes in the forms attached which in their judgment are appropriate.

NATALIE E. WEST
City Attorney

By 
MANUELA SCOTT
Deputy City Attorney

Attachments

BOARD OF ADJUSTMENT RESOLUTION ADOPTING REGULATIONS
IMPLEMENTING ORDINANCE NO. 5468-N.S., THE ELMWOOD
COMMERCIAL RENT STABILIZATION AND EVICTION PROTECTION
ORDINANCE AND SETTING FILING FEES

WHEREAS, the Board of Adjustments is charged with implementing the provisions of City of Berkeley Ordinance No. 5468-N.S., the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance; and

WHEREAS, the Board of Adjustments may adopt rules and regulations to discharge its responsibilities under the ordinance.

NOW, THEREFORE, Be It Resolved by the Board of Adjustments of the City of Berkeley as follows:

1. The attached regulation sections are hereby adopted as regulations of the Board;
2. A petition filing fee is hereby set at \$100 for the first unit and \$20 for each additional unit in the same building;
3. The staff is hereby authorized to modify any forms required by the Board, if in its judgment such revisions are appropriate.

August 23, 1982

Legal Department
City of Berkeley
2180 Mievia Street
Berkeley, California 94704

Attention: Natalie E. West, City Attorney

Ladies and Gentlemen:

I am one of the owners of a building located at 2900-2908 College Avenue, in what is known as the Elmwood District of Berkeley. I have reviewed the draft regulations implementing the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance issued under your memorandum to the Board of Adjustments dated August 5, 1982, and have several comments, both specific and general.

The ordinance itself is confusing and contradictory, and is subject to a wide variety of interpretations by various individuals - whether as government or private or public interests. These conflicting interpretations create additional delays and burdens prejudicial to the property owner.

In general, we are concerned about what appears to be a haphazard procedure for preparing and adopting the regulations necessitated and required by the ordinance. Review and comment on the regulations in increments tends to lock-in certain assumptions regarding the meaning and relationship of the various parts of the ordinance, without giving us adequate opportunity to evaluate those assumptions.

Also, the piece-meal review and adoption of regulations will require amendments to previously adopted regulations and contribute to the confusion and disorganization in the enforcement of the ordinance. It certainly does not contribute to clarification of the ordinance or how it will be enforced. Furthermore, ambiguous and incomplete regulations result in enormous delays and are prejudicial and burdensome to property

AUG

EXHIBIT B-1

owners. My comments on the specific regulations in the remainder of this letter highlight this general problem.

Specifically, the regulations presented for review raise the following questions and issues:

1. The regulations do not meet the requirement of §8(b) of the Ordinance which calls for regulations "designed to assure prompt and fair resolution of disputes . . ."

2. The regulations do not establish a petition procedure. The regulations should at a minimum, address the following issues:

- a. Procedure for a filing a petition for adjustment by landlord or tenant.
- b. Qualifications for hearing examiner.
- c. Powers of the hearing examiner.
- d. A notice period for a hearing.
- e. The scope of a hearing (Who may participate, and under what rules of order and evidence?)
- f. The maximum time period for a decision.
- g. Clarification of time period for judicial appeal.
- h. Effect of the decision on the rent increase/decrease.
- i. Confidentiality of information supplied by parties to the hearing.

3. These regulations require a property owner to provide notices in the absence of a comprehensive set of regulations, forcing the property owner to make interpretations of the ordinance without adequate information, such as all the costs which may be included in a rent adjustment and a definition of "fair and reasonable return on investment." Yet, if those interpretations are incorrect, the property

owner is exposed to the possibility of punitive or triple damages for incorrect statements. This is patently unfair to the property owner.

4. The regulations should permit the landlord to petition for rental adjustment prior to making expenditures in order to determine whether the cost for those improvements or additional services can be recouped by adjusted rent.

5. The regulations should include a definition of and method for determining fair and reasonable return on investment. This is a critical portion of the ordinance, and without it, the regulations do not meet the requirements of Section 8(b) of the ordinance.

6. Section 571(b): Does the use of the phrase "specified term" mean the same thing as "fixed term" in Section 13a of the ordinance? Also please note that Section 13 of the Ordinance does not include "on or" with respect to "before October 1, 1981".

7. Section 571(b)(iii): Is there a choice of method for computing the base rent on expiration of the lease? Is the statement by the landlord binding on the landlord or the tenant?

8. Section 571(b)(iv): The first line of this section would read "or or after October 1, 1982". See Paragraph 6 above.

9. Does the phrase "rent in effect" mean the rental terms of the lease as a whole or the actual amount being paid and on what basis? Does this provision contemplate a lease based on percentage rent?

10. Section 572(a): Throughout this section, "previous" tenant should be distinguished from "prospective" tenant.

11. Section 571(c): How does the tenant know the base rent and the method by which the base rent was computed?

Once again, it is extremely difficult to evaluate just a small portion of the regulations out of context. We

Legal Department
City of Berkeley
August 23, 1982

4.

urge you not to adopt the regulations in small bites, but to present us with a comprehensive set of regulations to evaluate.

We hope that our comments will contribute to the adoption of regulations which will truly be helpful in assisting property owner and tenants to know their rights under the Ordinance. However, we do not intend these comments to waive any rights we may have to protest the Ordinance itself -- either its manner of adoption or its legality (either on its face or as applied to us or our property) - or the regulations as adopted or applied.

Please contact me if you have any questions regarding my comments.

Very truly yours,

Walter Wight

*Walter Wight
1433 7th Ave.
Berkeley, CA 94702
1433 7th Ave.
Berkeley, CA 94702*

EXHIBIT B-4

City of Berkeley

LEGAL DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704



(415) 644-6380

August 25, 1982

Mr. Walter Wright
c/o Harold Brandel
1933 Francisco Street
Berkeley, California 94709

Re: Comments received on Board of Adjustment
proposed regulations Sections 571, 572 and 573

Dear Mr. Wright:

Thank you for your thoughtful comments on the first set of proposed regulations issued by the Board of Adjustments. Although I have not yet reviewed the substantive comments you made regarding Sections 571, 572 and 573, I have considered the concerns you raised with respect to the time-table for adoption of the regulations and find these concerns to have substantial merit.

Originally, we had anticipated the process of issuing regulations to be far more lengthy than it has been in fact. For this reason, we felt it essential to require notices to tenants as soon as possible so as to enable landlords and tenants to determine whether they should go to court to resolve any disputes regarding prevailing rents rather than awaiting adoption of proposed standards and procedures by the Board of Adjustments. As it turns out, two weeks after issuance of the proposed regulations regarding notices to tenants, the Board of Adjustments was able to issue proposed regulations in all remaining substantive and procedural areas identified as needing regulation, with the exception of petitions for "extraordinary rent increases", where the landlord feels that the application of the ordinance would be unconstitutional. Because this latter area is the most difficult to regulate and because petitions for extraordinary rent increases are both substantively and procedurally distinct from other aspects of the ordinance, it was decided that implementation of the rest of the commercial rent stabilization program should not be delayed to await the adoption of regulations in the area of extraordinary rent increases. We plan, however, to develop regulations on extraordinary rent increases as soon as possible.

EXHIBIT C-1

Walter Wright

-2-

August 25, 1982

Although, as I have explained, when the ordinance was first passed it appeared that regulations requiring notices to tenants should be adopted as soon as possible in order to reduce uncertainty in the community, in light of the unanticipated speed with which the other substantive and procedural regulations have been developed, there no longer appears to be any compelling reason to adopt the regulations regarding notice earlier than the remaining regulations issued last night by the Board of Adjustments. Moreover, in light of the comments made in your letter about some of the problems presented by this process, I intend to recommend to the Board Sub-Committee that it schedule final adoption of the regulations regarding notice for the same day as the remaining regulations issued by the Board of Adjustments last night. You will receive notice of the date, time and place of that meeting. I have enclosed for your review and comment a copy of the packet which went to the Board of Adjustments last night. The proposed regulations issued by the Board are contained in this packet. Please note that the written comments must be received on or before September 7, 1982 at 4:30 p.m. in the Legal Department. Of course, comments you have already made regarding notices to tenants will be seriously considered by the staff and the Board of Adjustments Sub-committee prior to submission of the regulations to the Board of Adjustments for final adoption.

Thank you once again for your comments.

Very Truly Yours,

NATALIE E. WEST
City Attorney

By

MANUELA SCOTT
Attorney at Law

MS: mb

Enclosure

EXHIBIT C-2

RECEIVED

SEP 7 1982

CITY ATTORNEY

September 7, 1982

City of Berkeley
Legal Department
2180 Milvia Street
Berkeley, California 94704

Re: Comments On Additional Proposed Regulations
Implementing The Elmwood Commercial Rent
Stabilization and Eviction Protection Ordinance

Ladies and Gentlemen:

We have reviewed the additional proposed regulations received under your cover letter dated August 25, 1982. Although these regulations do attempt to establish a petition procedure, they raise a myriad of new questions and issues. We appreciate the fact that they were drafted in haste; nonetheless, we believe that all interested persons will be best served by thorough and well-written regulations.

Generally, although these regulations purport to deal with "all remaining substantive and procedural areas identified as needing regulation, with the exception of petitions for 'extraordinary rent increases'...", we do not find the regulations to be so broad in scope. For example the regulations contain no provision on the confidentiality of the property owner's financial information or the terms of the leases.

In addition, we wish to reiterate our point that it is difficult to evaluate these regulations without knowing how the City will handle petitions for "extraordinary rent increases". We do not agree with you that this issue is separate and distinct from the remainder of the regulations. Moreover, for many building owners these latter regulations will be the most crucial. Failure to consider and adopt the regulations in a comprehensive manner may commit us to certain assumptions which will ultimately be prejudicial to property owners.

EXHIBIT D-1

Furthermore, there are many new terms used in the Regulations and undefined. Other terms are not consistent with the Ordinance and with other portions of the Regulations. This adds to the ambiguous and confusing aspect of many of the Regulations.

We have the following questions and comments on the Regulations in specific:

Section 530 - Maintenance and Operation Expenses

1. Subsection (a): Who determines what is "reasonable"?
2. Subsection (b)(1): What are "avoidable" expenses increases?
3. Do maintenance and operating ("operations"?) expenses include the costs of complying with the Ordinance (we do note the exception for costs incurred for violation of the Ordinance or regulations)?
4. Subsection (c): This entire provision seems extremely impractical. Also, where is the concept of "rent ceiling" first introduced and defined?

Section 531 - Capital Improvements

1. We question the authority of the Board to issue the Amortization Schedules. Most of the periods seem too long.
2. The Regulation is vague in many respects:
 - a. Subsection (b): How is a "direct" cost per unit determined?
 - b. Subsection (c)(2): We object to the concept that capital improvements should be approved by the tenants. We believe this goes beyond the scope of the Ordinance. In any event, the Regulation does not

establish when or how this approval should be sought. Does any presumption arise if the landlord does not obtain the approval of the tenants? Often long-term "unglamorous" improvements are not perceived by tenants to be in their best interest because they may have an extremely short-term point of view.

c. Section (d): Who is going to make the determination of the "reasonable cost" of capital improvements?

d. What if the property owner's long term lender requires a refinancing of the property in order to finance capital improvements, c.f., a loan may prohibit a subordinate lien. Is this an exception to the other provisions of the Ordinance and the Regulations?

e. Section (g): On what basis will the Board establish the ammortization schedule for the ammortization period for improvements not listed on the schedule?

Section 850 - Right To Petition

1. How does an "interested party" establish its identity? How is "interest" defined and when is it determined? Can interested parties "intervene"? Does this Regulation envision a procedure by which the interested party may reopen a decision in which it has a "interest" but in which it has not previously participated? This seems highly prejudicial to the parties who participated in the original decision process.

Section 851 - Time to Petition

1. The time to petition is very unclear. Section 851 sets up time limits and rules of order which are inconsistent with Section 11 of the Ordinance. In fact, we are not sure what Section 11 of the Ordinance is about; there are no regulations amplifying it. For example, Section 11(c) envisions that only after a tenant fails to bring a "civil or administrative action within 120 days of any violation of this Ordinance" can a third party or the City bring an action. Regulation 851 does not follow this sequence or these time limits at all.

2. Is there going to be any provison for consolidation? Or will each petition be heard separately?

Section 852 - Filing Petitions

1. Is the use of the words "person" and "petitioner" meant to be synonymous?

2. The Regulations are inconsistent and incomplete regarding subpoenas. Page 6 of the form following Regulation 852 contemplates that all documents to be introduced in evidence be attached to the petition. However Regulation Section 854 seems to allow the issuance of subpoenas to produce documents after the filing of the petition. Which is correct? Also, the subpoena procedures themselves need further clarification.

3. Why should the tenant be considered an adverse party simply because it does not file a petition? The Regulations seem to presume that any interested party or neighborhood organization will only be acting in some position adverse to that of the landlord. We recommend that the identification of parties as "interested" or "adverse" be based solely on the substance of their position with respect to the petition.

4. Is there any penalty or default if the tenant does not file a response to a third party petition under Subsection (b)?

5. Does Subsection (c) mean that the case shall be set for hearing within thirty days of the completed petition and response? If so, it is not very clearly written.

6. The enclosed form does not have a comparable identification for a neighborhood organization. Also, does the neighborhood organization have an automatic right to intervene or must it also show an "interest"? Does the Board determine whether an interest is sufficient to give rise to the right of intervention? Also note that in Section VIB the use of the language "varying rent levels" is not the same language as used in Section 5(b)(i). In Section VII the term "prevailing rent" is not established as of a definite period in time. Does "new rent" equal "prevailing rent"?

7. Subsection B.3. needs punctuation and a rewrite. Does Section XIII apply to any lease or just term

leases? And, the final paragraph regarding subpoenas is inconsistent with respect to the time as to which subpoenas may issue. Does the pronoun "I" refer to "petitioner" or "Board"?

Section 853 - Subpoenas

See comments above. This appears to be completely contrary to the declaration on the last page of the petition form which indicates that at the time the petition is filed all subpoenas must have been issued and all documents attached to the petition.

Section 854 - Hearing By The Board

1. Does this Section override Section 8(c) of the Ordinance which contemplates that the Board can delegate the hearing powers to one or more members or to a hearing officer?

2. From whom do the "requests" in Subsection (b) come: from the petitioner? At the time of hearing?

3. Will the parties to the petition hearing (as opposed to the Board) have the right to call, examine and cross-examine witnesses and to introduce evidence into the record?

Section 856 - Evidence

1. We believe that the standard for admission of evidence is far too subjective to be fair or reliable.

2. Who will have the power and expertise to determine whether something is a "material issue of fact" or "inadmissible hearsay". Who will make these evidentiary determinations, which really are from the technical rules of evidence? Will it be by Board vote? Will there be a lawyer present? We believe that it is prejudicial to the parties to the hearing to have issues of evidence decided by the City Attorney's office, which is not a neutral arbiter but an advocate for one of the parties to the hearing, c.f. the City of Berkeley.

Section 857 - Conduct of Hearing

1. How is the "burden of proof on the issues" to be determined?
2. What if there is more than one issue with different burdens placed on each party?
3. What if there are several parties?
4. Once again, the reference to documentary evidence is inconsistent throughout the Regulations.

Section 858 - Decision By The Board

1. Subsection (c) does not clearly establish a date on which the Board's decision shall be final and binding. Do you mean to say "on" the thirtieth day rather than "within thirty days"? Or, will the decision itself set a date on which it will be final?

Section 859 - Hearing Record

We believe that all of the documents which are part of the petition proceeding and which have been accepted into evidence by the Board should be part of the hearing record. Also, to the extent that offers of proof are made in the hearing process, those offers should be included as part of the record.

In summary, we appreciate the hard work that has been done by the Legal Department, but we still find that these Regulations are incomplete and confusing. Terms are used inconsistently and without definition, the procedures for many of the regulations are still vague and the standards for many Board decision still undefined. I am sure you can appreciate the difficult problems that these problems raise for property owners and tenants alike. We urge you to spend more time, consideration and thought with respect to the adoption of these Regulations.

We look forward to the next draft.

Sincerely,

David Brandel
1933 FRANCISCO ST
(415) 666-0827
Berkeley, Ca.

EXHIBIT D-6

ANALYSIS OF WRITTEN COMMENTS RECEIVED

Nature of Comment	Incorporated		Explanation
	Yes	No	
Letter from Walter Wright dated 8/23/82			
1. All regulations should be adopted simultaneously.	In Part		All regulations except for those on "reasonable rate of return" will be adopted on 9/29/82. "Reasonable rate of return" regulations take longer to develop. There is no reason to delay petitions on allowable adjustments to await adoption of "reasonable rate of return" regulations. See also letter dated 8/25/82 from M. Scott to W. Wright.
2-4 Comments 2-4 were addressed in the second set of proposed regulations issued by the Board on 8/23/82.			
5. Specified term should be fixed term.	X		See Section 571(b).
6. The writer believes that the ordinance only exempts leases executed "before Oct. 1, 1981" not "on or before Oct. 1, 1981" as stated in Section 571(b).		X	Sections 13(a) and 5(b)(i) read together result in exempting leases executed " <u>on</u> or before Oct. 1, 1981" except for those subject to the C.P.I. cap.
7. Writer inquires as to whether there is a <u>choice</u> of method for determining base rent.	X		There is not. Sections 571, 572 and 573 have been revised to clarify that the method used for calculating base rent is the method <u>required by the ordinance</u> .
8. Date in Section 571(b)(iv) is wrong.		X	The writer misreads ordinance. See body of memorandum for an explanation of the application of the ordinance to various leases.

Analysis of Written Comments Received (Cont.)

Nature of Comment	Incorporated		Explanation
	Yes	No	
9. The writer asks the meaning of the phrase "rent in effect" in Section 571(b).	X		The writers reading of the regulation is correct.
10. Distinguish between prospective tenant and previous tenant in Section 572.	X		Section 572 now distinguishes between "new" tenant and "previous" tenants.
11. How does tenant know how base rent is computed for purposes of the roll back.	X		Section 571(d) requires the tenant to declare under penalty of perjury the efforts made to correctly calculate base rent and that the data collected be specified.
<u>Letter from Harold Brandel and Walter Wright dated 9/7/82</u>			
A. No provision is made for confidentiality of information disclosed.	X		Section 853 regarding subpoenas has been revised to provide for the application and issuance of protective orders. Although the notices required by the ordinance cannot be kept confidential because of the right of interested parties to challenge rent levels, corroborating information such as loan applications containing information of a personal nature such as income would be subject to protective orders in appropriate cases.
B. <u>Section 530</u>			
1. "Reasonable" should be defined in Section 530.	X		Section 530(a) has been revised to further clarify the use of the word reasonable. The term is commonly used in statutory and regulatory language i.e. "reasonable care", "reasonable attorneys fees".

Analysis of Written Comments Received (Cont.)

Nature of Comment	Incorporated		Explanation
	Yes	No	
2. "Avoidable" expense increases should be defined.	X		This section has been deleted. The problem which we sought to avoid is addressed by the changes in language in Section 530(a).
3. Costs of complying with the Ordinance should be recoverable.	X		Section 530(a)(3) now contains a reference to Section 858 which authorizes the Board to award the prevailing party legal accounting and filing fees.
4. Section 530(c) is impracticable.	X		The provision has been revised to delete the last sentence requiring an automatic downward readjustment of rent. The Board would still be authorized to require such a downward adjustment in a particular case where the record keeping burden would not be onerous.
<u>C. Section 531</u>			
1. Board does not have authority to issue amortization schedules; they are too long anyway.		X	The Board probably has the duty to issue such schedules so that it cannot be attacked for making <u>ad hoc</u> decisions. The IRS schedules were not used because they are usually shorter than the actual life of the improvement.
2. (a) "Direct" cost should be defined.			A Subcommittee member pointed out that direct cost does have a meaning in accounting terms. Installation cost of labor and materials rather than the cost of financing.
(b) The regulation should not require that capital improvements be approved by the tenants.		X	The writer misreads the regulation. Written consent of the tenants is evidence that the improvement benefited the tenant, if, the improvement is justified on this basis rather than that it necessary under Section 531(c)(2.) The section has been revised to make the written consent more clear.
(c) Who will make the determination that the cost of the improvement is reasonable.		X	The Board will make this determination. The interpretation of the term "reasonable cost" is not unique to this regulatory scheme.

Analysis of Written Comments Received (Cont.)

Nature of Comment	Incorporated		Explanation
	Yes	No	
(d) Will increased charges resulting from a refinancing of the property be an allowable adjustment if the long term lender requires that the whole loan be re-financed.		X	No. This situation is extremely unlikely to occur. It would be inappropriate to pass through, as rent, finance charges on 300,000 in order to finance a 5,000 improvement.
(e) How will improvements not listed in schedule be amortized.	X		Section 531(g) has been revised to provide that "all relevant factors" will be considered. The Board can also amend the schedule from time to time.
<u>D. Section 850 - Right to Petition</u>			
1. "Interested" Party should be defined. Decisions should not be reopened.	In Part		Section 850 has been revised to take out the section on reopening cases. This term is used in other contexts. It seems sufficiently specific to give the Board guidance. Further definition is very difficult.
<u>E. Section 851 - Time to Petition</u>			
1. Conform time limits to Ordinance.	X		Section 851 has been revised to conform to Section 11(c) of the ordinance.
2. Make provision for consolidation.	X		Section 852(d) has been added which provides for such consolidation.
<u>F. Section 852 - Filing Petition</u>			
1. Is "person" the same as "petitioner".	X		Section 852 has been revised to make this clearer.
2. Regulations are inconsistent regarding subpoenas.		X	Subpoenas can be issued for documents <u>prior</u> to filing a <u>petition</u> if necessary to file a petition or <u>after</u> the filing of a petition, e.g., when necessary to prepare a <u>response</u> . In this manner the Board will be assured that all relevant documents will be attached to the petition or response prior to the hearing.

Analysis of Written Comments Received (Cont.)

Nature of Comment	Incorporated		Explanation
	Yes	No	
3. The definitions of adverse party should be changed.		X	The writer appears to read a perjorative meaning into this term. The regulation uses the term "adverse party" to describe persons other than the petitioner for ease of reference. When an interested party files a petition, both the tenant and the landlord are deemed adverse parties and thus, are entitled to respond.
4. Is failure to respond result in a penalty.	X		Section 852(e) has been revised to clarify that all cases will be decided by the Board even if no response is made.
5. The time for calendaring a hearing is unclear.	X		Section 852(c) has been revised to include the language suggested by the writer.
6. The petition does not provide for an interested neighborhood organization to petition.	X		The petition has been revised to contain such a section on page 1.
7. Section III B of the form needs to specify that it refers to "term" leases. The warning at the end of the form is unclear as to who is being warned.	X		Section III A, B, C, and D have all been revised to clarify this point. The signature line now states "petitioner".
<u>G. Subpoenas</u>			
The provision on subpoenas are inconsistent.		X	See response on this issue to F(2) above.
<u>H. Section 854 - Hearing By Board</u>			
1. Does the Section override 8(c) of Ordinance regarding the hearings.		X	The Ordinance authorizes the Board to choose how to hear petitions. The Board's sub-committee expressly rejected hearing cases in panels or of delegating their authority to hearing examiners. The latter method is too expensive, and the method chosen enables the whole Board to develop expertise in the area.

Analysis of Written Comments Received (Cont.)

Nature of Comment	Incorporated		Explanation
	Yes	No	
2. From whom do the requests for subpoenas come.		X	From either party, but, not at the hearing unless the requirements of Section 857(c) are met.
3. Will the parties have the right to call, examine and cross-examine witnesses.	X		Yes, although the Board has the inherent power to control the length of such testimony and to prevent repetitive testimony. This procedure is followed in virtually all administrative hearings and is probably a constitutionally mandated requirement in this type of quasi-adjudicatory hearing.
<u>I. Section 856 - Evidence</u>			
1. Standard for admission is too subjective and unreliable.		X	The standard used is virtually identical to that used in other administrative hearings for e.g. before the State Unemployment Insurance Appeals Board. It attempts to strike a balance between the technical rules of evidence, on the one hand, and no rules at all, on the other.
2. The section on inadmissible hearsay is too technical.		X	This language has been inserted because it is a rule of administrative law. Violation of this rule results in reversal of the administrative decision. The rule has been clarified to state that the inadmissible hearsay must be objected to for the rule to apply. The City Attorney's office can review proposed findings to ensure that this rule is not violated. The City is not a party, and the City Attorney will be acting as counsel for the Board of Adjustments.
<u>J. Section 857 - Conduct of Hearing</u>			
1. How is the burden of proof determined?		X	The Ordinance sets this out in most cases. The Board can decide who has the burden by virtue of the particular issue, in others.

Analysis of Written Comments Received (Cont.)

Nature of Comment	Incorporated		Explanation
	Yes	No	
2-3 What if there are more than one issue with different burdens or different parties?	X		Section 857 clarifies this to require that the party with the burden of proof on the majority of issues go first. This provisions has been inserted to ensure that a tenant is not required to present the case first just because he or she filed the petition, although it is the landlord's burden of proof to establish that the rent is based on allowable adjustments. The hearing is likely to become confusing otherwise.
4. Rules on documentary evidence are contradictory.		X	See response to 7F(2).
K. <u>Section 858 - Decision by Board</u>			
Effective date of Board decision is not clear.		X	Section 858(c) revised to incorporate language proposed i.e. "on the thirtieth day...."
L. <u>Section 859 - Hearing Record</u>			
Hearing record should contain documents and offer of proof.		X	Section 859 revised to include express reference to documentary evidence and offers of proof.

INDEX OF REGULATIONS

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151	Calculation of time-service by mail
400	Definitions
401	" Board"
402	" Ordinance "
530	Maintenance and Operating Expenses
531	Capital Improvements and Attached Schedule
571	Notice of Prevailing Rent
572	Notice to New Tenants
573	Notice of Rent Increases
574	Administrative Order of Return to Base Rent/ Rent in Last Lawful Notice of Rent Increase
850	Right to Petition
851	Time to Petition
852	Filing of Petitions
853	Subpoenas
854	Hearing by Board
855	Disqualification of Interested Board Member
856	Evidence
857	Conduct of Hearing
858	Decision by the Board
859	Hearing Record
1351	Existing Leases

151 - Calculation of time - Service by mail

For purposes of calculating the time periods specified in the ordinance and implementing regulations, notices served by certified mail shall be deemed served five days after the date they were mailed.

400 - Definitions - Same as those in Ordinance

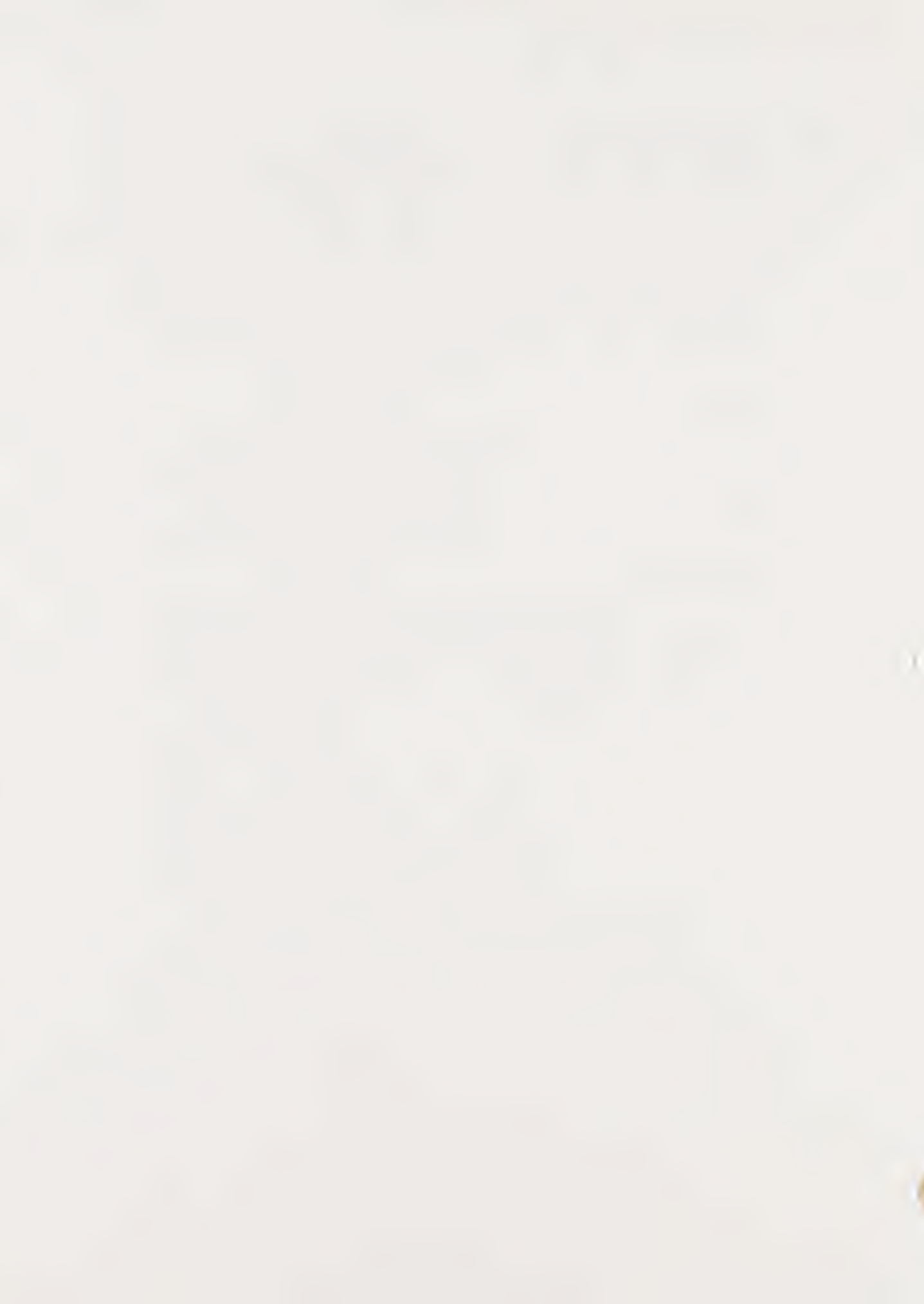
Unless otherwise specified, in a specific regulation, or further defined in this chapter the terms used in regulations implementing the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance shall have the meaning set forth in Section 4 of that ordinance.

401 - "Board"

The word "Board" used in these regulations shall mean the Board of Adjustments of the City of Berkeley and the Commercial Rent Stabilization office of the Board.

402 - "Ordinance"

The word "Ordinance" used in these regulations shall mean the Elmwood Commercial Rent Stabilization and Eviction Protection Ordinance.



Section 530 - Maintenance and Operating Expenses

- (a) Maintenance and operating expenses shall include all expenses incurred reasonably and in good faith for maintaining and operating the rental unit for which the adjustment in rent is sought, except as provided in subdivision (b) below.
- (b) Maintenance and operating expenses shall not include the following:
- (1) mortgage principal or interest charges on a loan where such increased charges result from a larger loan being taken on the property (as contrasted with increased charges resulting from increases in prevailing rates of interest), whether due to re-financing by the landlord or purchase financing by a new landlord;
 - (2) any penalties, fees, damages, or interest assessed or awarded for violation of the Ordinance or these regulations;
 - (3) legal, accounting or filing fees or other costs incurred in connection with any Board of Adjustments proceeding or any court action brought pursuant to the ordinance, except as provided in Section 858;
 - (4) organization or association dues or fees;
 - (5) legal or other costs for any evictions;
 - (6) depreciation of the property;
 - (7) expenses for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for

Section 530 - continued

damages, agreed upon payments, or any other method.

- (c) Any non-recurring expense shall be amortized over a reasonable period of time, to allow the expense to be recovered during that period.

Section 531 - Capital Improvements

- a) Purpose. The purpose of this Section is to ensure that the costs of capital improvements are amortized over a reasonable period of time and are paid for by all tenants who benefit from them.
- b) Capital Improvement. A capital improvement shall be any improvement to a unit or property which has a useful life of more than one year and a direct cost of \$100 or more per unit affected.
- c) Policy. The rent ceilings for a unit or property may be adjusted to reflect the amortized cost of planned or completed capital improvements to the unit or property, where such capital improvements:
 - (1) are necessary to bring the unit or property into compliance or maintain compliance with applicable local code requirements affecting health and safety, provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased property damage and deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement; or
 - (2) are provided by the landlord in good faith to primarily benefit the tenant(s). There shall be a rebuttable presumption that a specific capital improvement is so provided if it has specifically been approved in writing in advance by tenants in a majority of the units affected after written notice by the landlord of the maximum amount of increase in rent per affected unit which would be necessitated to cover the cost of the improvement.

Section 531 - Continued

- d) Amortized Cost. The annual amortized cost of a capital improvement shall be calculated according to the following formula: the reasonable cost of the capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement.
- e) Cost of Financing. The cost of financing a capital improvement shall be the actual and reasonable amount of interest and other charges paid to the lender in connection with that portion of any loan necessary to cover the cost of financing.
- f) Imputed Financing. If a landlord has financed the capital improvement with her/his own funds, in whole or in part, and the improvement costs at least \$1000, or at least \$250 per unit affected, the Cost of Financing for that part shall be deemed to be the amount of financing costs the landlord would have incurred had the landlord financed the capital improvement with a three year loan (or a loan for the period of the useful life of the improvement, whichever is less) at an interest rate equal to the average rate for 26-week U.S. Treasury Bills for the most recent calendar quarter preceding the filing of the petition.
- g) Amortization Schedule. The cost of a capital improvement shall be amortized according to a schedule to be established by the Board, unless there is a specific finding that a different time period is more appropriate in a particular instance. For capital improvements not listed in the schedule, the Board shall determine a reasonable amortization period based on all relevant factors.

Section 531 - Continued

- h) Future Improvements. In order to encourage necessary capital improvements, a landlord may petition for an upward rent adjustment based upon the anticipated future cost of a capital improvement. If the adjustment is granted in whole or in part, it shall not take effect until the capital improvement is completed, and its actual cost and completion is documented to the Board. Adjustments under this subsection shall not be made for anticipated costs for ordinary repairs and maintenance.

BOARD OF ADJUSTMENTS
CAPITAL IMPROVEMENTS
AMORTIZATION SCHEDULES

Pursuant to Board Regulation Section 531 the following Amortization Schedule is hereby established. The amortization periods in this schedule shall apply to all listed improvements unless the Board makes specific finding based on all relevant factors that a different time period is more appropriate in a particular instance.

<u>IMPROVEMENT</u>	<u>YEARS</u>
Air Conditioner	10
Appliances	
Dishwasher	5
Dryer	7
Fans	10
Garbage Disposal	5
Refrigerator	10
Stove	10
Washing Machine	7
Water Heater	5
Cabinets	10
Carpentry	10
Ceiling	10
Doorbells	10
Doors	10
Dumpster	10
Electrical (light) fixtures	10
Electrical wiring	15
Elevator	15
Fencing	10
Fire Alarm System/Smoke Detector	5
Fire Escape	10

<u>IMPROVEMENT</u>	<u>YEARS</u>
Flooring	
Hardwood	10
Linoleum	5
Tile	8
Carpet	5
Foundation	10
Furniture (bed, table chair, bureau, couch)	5
Gates	10
Gutters, downspouts	10
Heating (gas, electric, central system)	10
Insulation, weather-stripping	10
Landscaping (planting, sprinklers)	10
Locks	5
Mailboxes	10
Masonry	10
Plumbing - fixtures	7
pipes	10
Painting	4
Patio, porch, deck	10
Pump (sump)	10
Paving (asphalt, cement)	10
Plastering	10
Roofing	10
Security system, intercom	10
Siding	10
Solar energy equipment	10
Stairs, steps	10
Wallpaper	5

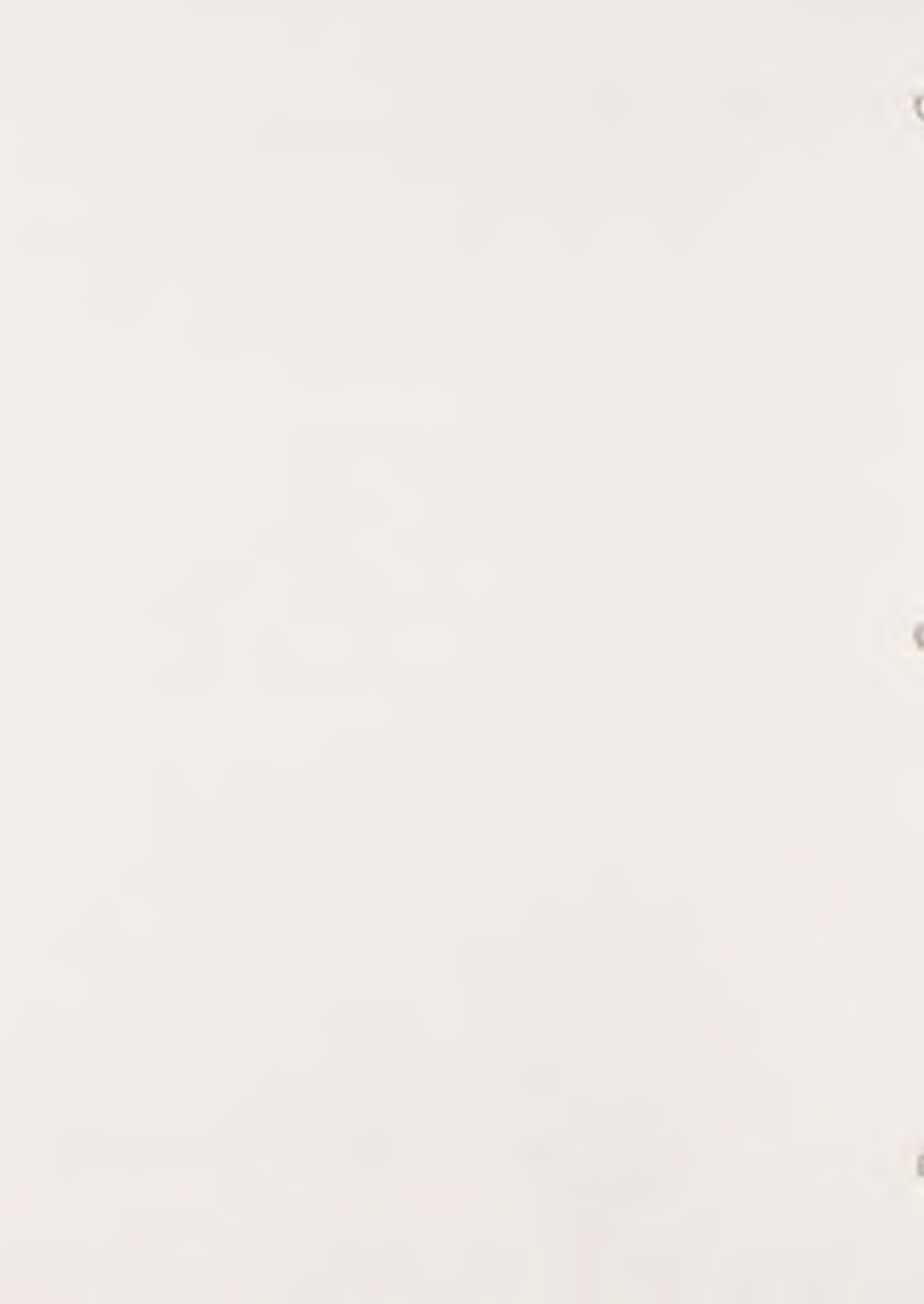
	<u>IMPROVEMENT</u>	<u>YEARS</u>
Walls		10
Windows		5



Section 571 - Notice of Prevailing Rent

(a) Except as provided in sub-section (b) within thirty (30) days of the adoption of this regulation by the Board, every landlord of commercial premises in the geographical area covered by the Ordinance shall serve the tenant of each rental unit in such premises with written notice on a form provided by the Board which states all of the following:

- i) the base rent for the rental unit;
- ii) the method by which the base rent is required to be computed under the ordinance;
- iii) if the rent currently charged the tenant exceeds the base rent for the rental unit, the basis on which the excess is claimed to be an allowable adjustment and the manner in which it was allocated to the tenant's rental unit;
- iv) that the tenant has a right to examine all documents on which the landlord relies in claiming that the rent charged is legally permissible; and
- v) that the tenant has a right to petition the Board in order to contest the validity of the rent being charged, but must do so within 120 days of the date the notice was served but no later than 5 years from the effective date of any rent level being challenged. The statement required by subsection (a) (iv) shall be in capital letters and shall be underlined.



Section 571 - Notice of Prevailing Rent

(a) Except as provided in sub-section (b) within thirty (30) days of the adoption of this regulation by the Board, every landlord of commercial premises in the geographical area covered by the Ordinance shall serve the tenant of each rental unit in such premises with written notice on a form provided by the Board which states all of the following:

- i) the base rent for the rental unit;
- ii) the method by which the base rent is required to be computed under the ordinance;
- iii) if the rent currently charged the tenant exceeds the base rent for the rental unit, the basis on which the excess is claimed to be an allowable adjustment and the manner in which it was allocated to the tenant's rental unit;
- iv) that the tenant has a right to examine all documents on which the landlord relies in claiming that the rent charged is legally permissible; and
- v) that the tenant has a right to petition the Board in order to contest the validity of the rent being charged, but must do so within 120 days of the date the notice was served but no later than 5 years from the effective date of any rent level being challenged. The statement required by subsection (a) (iv) shall be in capital letters and shall be underlined.

Section 571 (Continued)

- (b) Landlords of rental units subject to existing leases for a fixed term which specify the amount or manner of computing rent and which were executed on or before October 1, 1981, shall serve each tenant of such rental units with a notice which states that:
- i) the rent for the rental unit will be governed by the existing lease until it expires;
 - ii) the date on which the lease is scheduled to expire, unless the lease or the ordinance provides that the lease may be renewed;
 - iii) the method by which the base rent is required to be computed under the applicable section of the ordinance when the lease expires; and
 - iv) if the lease was executed on or after October 2, 1980, and the difference between the rent charged prior to the execution of the lease (hereinafter "prior rent") and the rent in effect under the terms of said lease at the time the notice is given (hereafter "present rent") exceeds the increase in the Consumer Price Index, for the period beginning the first date that the prior rent became operative to the first date that the present rent became operative, that retroactive to the date the present rent was established or June 8, 1982, whichever is later, the rent be immediately reduced to the prior rent plus such increase in the Consumer Price Index.

v) within 30 days of the date any such existing lease expires, the landlord shall serve the tenant of the rental unit the notice described in subsection (a).

If, under the terms of such lease or the ordinance, a party is given a right to renew the lease, and the right is exercised, the notice required by subsection (a) shall be given within 30 days of the date such renewal lease expires.

(c) Service of the notices required by subsections (a) and (b) will be accomplished by personal delivery to the tenant or by sending a copy of the notice to the tenant by certified mail. A copy of such notice shall be filed with the Board with an attached declaration under penalty of perjury that the tenant has been served.

(d) If the notice required by subsection (a) is not given, within the period set forth in that section, the tenant, shall have the right to serve on the landlord a written notice which states all of the following:

- i) that, as of the date of the next rent payment due at least 30 days from date of service of the notice the maximum legal rent for the rental unit shall be the base rent for the rental unit, unless the landlord complies with the notice requirement of subsection (a) before that date;
- ii) the amount of the base rent for the rental unit; and
- iii) the method by which the base rent is required to be computed under the ordinance and a declaration under penalty of perjury that a good faith and diligent

NOTICE OF PREVAILING RENT
(Required by Board
Regulation 571)

TO: (Name of Tenant) _____

(Address of Rental Unit) _____

THIS NOTICE CONCERNS THE PREVAILING RENT OF YOUR UNIT:

I. PREVAILING RENT - Landlords, check and complete one of the following:

- [] A. Your unit has no existing lease or it is subject to an existing lease which was executed on or after October 2, 1981. This means that your prevailing rent is equal to the base rent plus any allowable adjustments for expenses that have increased since the end of the period used for calculating base rent.

Base Rent \$ _____ per _____ (Time period)
(See Section II of this form for details)

Allowable Adjustments \$ _____ per _____ (Time period)
(See Section III of this form for details)

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

- [] B. Your unit is subject to a lease for a fixed term which was executed on or before October 1, 1980 and thus is not subject to the rent limits of the Ordinance until the lease expires. This means that the prevailing rent is equivalent to the rent specified in the lease.

The lease expires on: _____
(Note to Landlord: Do not fill in the date if the lease contains a renewal option or the ordinance gives either party a right to renew the lease.)

At the time of the lease expiration, the base rent is required to be computed under section _____ of the Ordinance.

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

- [] C. Your unit is subject to a lease for a fixed term executed between October 2, 1980 and October 1, 1981. The prevailing rent is the lease rent adjusted by the CPI ceiling as calculated in Section IV of this form until the lease expires.

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

- [] D. Other. Explain: _____

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

On the Back of This Notice Are Sections Explaining The Calculations of Base Rent, Allowable Adjustments and CPI Ceiling on Lease Rents. Relevant Support Documents are Attached.

IF YOU WISH TO DISPUTE THE LEGALITY OF THE RENT BEING CHARGED, YOU MUST FILE A PETITION WITH THE BOARD OF ADJUSTMENTS, COMMERCIAL RENT STABILIZATION OFFICE, 2180 MILVIA STREET, BERKELEY, CALIFORNIA WITHIN 120 DAYS OF THE DATE THIS NOTICE WAS SERVED ON YOU, BUT NO LATER THAN FIVE (5) YEARS FROM THE EFFECTIVE DATE OF A PARTICULAR RENT LEVEL CHALLENGED.

Signature _____ (Address, print) _____

(Name, print) _____

II. BASE RENT

The amount of the base rent is \$_____ per _____ (time period).
It is required by the Ordinance to be computed by the following method:

- ☐ A. Rent in effect on October 1, 1981 (Section 5(b)).
- ☐ B. Last rent under lease in effect on October 1, 1981 which called for fixed payments of varying amounts (Section 5(b)(i)).
- ☐ C. Gross sales method. (Section 5(b)(ii)).
- ☐ D. Rent had not been raised for _____ years prior to June 8, 1981^{1/2} and therefore the base rent was increased by 5% for each year of no increase for a total of _____ % to \$_____. (Section 5(b)(iii)).
- ☐ E. Other. Explain: _____

(Note to Landlord: Check applicable box above and set out on a separate sheet the step-by-step calculation you made in determining the amounts under relevant sections of the ordinance. The sheet must be attached to this notice.)

III. ALLOWABLE ADJUSTMENTS

The end of the period used for calculating base rent is 1/ and is referred to below as the "base rent date." The amount of Allowable Adjustments to the Base Rent is: \$_____ per _____ (time period). It is the total of the increase in the following expenses incurred since the base rent date.

	Monthly Cost in 12 month period ending with base rent date.	Monthly Cost since base rent date.	Amount of Increase
1. Maintenance & Operating Expenses	_____	_____	_____
2. Property taxes and/or fees in connection with property.	_____	_____	_____
3. Costs as a result of capital improvements (Amortization schedule must be attached)	_____	_____	_____
4. Allowable financing costs	_____	_____	_____
5. Other (Specify) _____	_____	_____	_____
6.	TOTAL		_____
7. The way in which these costs are allocated to your building is as follows: (Set out calculations for multi-unit buildings.)	_____ _____		

^{1/} Note to Landlord - This date will depend upon the method you are required to use to calculate base rent, e.g., if your base rent is calculated by the method set forth in II(B) above, the base rent date will be the date the lease expired.

IV. Consumer Price Index (CPI) Ceiling on Rents Set by Leases for Fixed Terms
Executed Between October 2, 1980 and October 1, 1981.

- A. Date lease was executed _____ (date).
- B. Rent that would be in effect today under the lease \$ _____.
- C. Date rent in B went into effect _____.
- D. Prior to date specified in A, last rent in effect
for this unit. \$ _____.
- E. Date when rent specified in D went into effect _____.
- F. Difference between rent specified in B and rent
specified in D (B - D). \$ _____.
- G. % increase in lease rent

$$\frac{F \times 100}{D} = \text{_____} \%$$

- H. Consumer Price Index for date in C: 2/ _____ (CPI Number)
- I. Consumer Price Index for date in E: _____ (CPI Number)
- J. Change in CPI (H - I)
- K. % increase in CPI

$$\frac{J \times 100}{I} = \text{_____} \%$$

- L. Indicate G or K, whichever is smaller: _____.
- M. Prevailing rent is lease rent adjusted by CPI ceiling
- $$D + (D \times L) = \$ \text{_____}.$$

NOTE

From now on the rent in your unit will be that set by your current lease until it expires, but no increase authorized may exceed the increase in CPI during a corresponding period.

The lease will expire on: _____ 3/

At that time the lease rent is required to be computed under Section _____ of the Ordinance. You are entitled to 30 days written notice of each such increase.

2/ Note to Landlord: Use All Items Consumer Price Index for All Consumer; S.F.-Oakland, CA; indicate index number for closest publication date. This index is published every month for the S.F.-Oakland Metropolitan Area and is available at the Reference Desk of the Berkeley Main Library (644-6648) and the Claremont Branch Library (644-6880).

3/ Note to Landlord: Do not fill in this date if your lease or the Ordinance gives either party the right to renew the lease.

572 - Notice to New Tenant

- (a) Any new tenant who enters into a rental agreement whether written or oral after the adoption of this regulation shall, prior to his or her execution of such a rental agreement be provided with a written notice by the landlord on the form provided by the Board, which states all of the following:
- i) the base rent for the rental unit;
 - ii) the method by which the base rent is required to be computed under the Ordinance;
 - iii) for each time the rent was increased, whether the previous tenants received the notices required by the ordinance and implementing regulations and a copy of each such notice shall be attached; provided however that if the rental unit has been subject to a lease, for a fixed term the new tenant shall be served with the notice required by Section 571.
 - iv) if the rent charged the new tenant exceeds the rent charged the previous tenant, the basis on which the increase is contended to be an allowable adjustment;
 - v) that the new tenant has a right to petition the Board to contest the validity of the rent being charged, but must do so within 120 days of the date the notice was provided to the new tenant but no later than five years from effective date of any particular rent being challenged. The statement required by subsection (a)(v) shall be in capital letters and shall be underlined.

572 - Notice to New Tenant (Continued)

- (b) A copy of the notice required by subsection (a) shall be filed with the Board along with a declaration under penalty of perjury that a copy was provided to the new tenant.
- (c) If a landlord fails to provide to the new tenant and file with the Board the notice required by subsection (a), the new tenant may serve the landlord with a written notice on a form provided by the Board which states all of the following:
 - i) that, as of the date of the next rent payment due at least 30 days from the date of service of the notice, the maximum legal rent for the rental unit shall be the base rent for that rental unit or the amount specified in the last lawful Notice of Rent Increase served on a tenant at the rental unit and filed with the Board, whichever is greater; provided however that for purposes of this subsection, only, a Notice of Rent Increase will be considered "lawful" if it has not been invalidated by order of the Board;
 - ii) that the rent will not be reduced in the manner described in subsection (c)(i) if the landlord complies with the notice provisions of subsection (a) before the effective date of the reduction in rent authorized by this Section;
 - iii) the amount of the reduced rent set in accordance with subsection (c)(i);
 - iv) if the amount of the reduced rent is the base rent,

the method by which the base rent is required to be computed under the ordinance, and a declaration under penalty of perjury, stating that a good faith and diligent attempt was made to correctly calculate the base rent for the rental unit, the specific good faith efforts made, the information used to calculate the base rent, and the manner in which it was calculated.

- (d) A copy of the notice authorized by subsection (c) shall be filed with the Board along with a declaration under penalty of perjury stating the date and manner in which the landlord was served.
- (e.) If, within the time period specified in the notice by the tenant, pursuant to subsection (c) the landlord has failed to serve the new tenant with the notice required by subsection (a), the maximum legal rent shall be the rent specified in the notice served on the landlord pursuant to subsection (c) effective the date of the next rent payment due at least 30 days from the date of service of that notice, and continuing in effect until the next rent payment due at least two weeks from the date the landlord serves and files with the Board, the notice required by subsection (a).

NOTICE TO NEW TENANT
(Required by Board
Regulation 572)

TO: (Name of Tenant) _____

(Address of rental unit) _____

I. LAST PREVIOUS NOTICE SERVED: (date) _____. The last Notice of Prevailing Rent which was served on the previous tenant indicated that:

[] A. The amount and basis for the base rent and all allowable adjustments. The notice is attached.
The base rent is \$ _____ per _____ (time period).
was established on _____ (date).

[] B. The base rent had not yet been established because:

[] 1. The rent of the unit was previously subject to a lease executed on or before October 1, 1980.

OR

[] 2. The rent of this unit was previously subject to a lease executed between October 2, 1980 and October 1, 1981, adjusted by a CPI ceiling.

(Note to Landlord: You must serve a notice of prevailing rent on the new tenant if you checked either B(1) or B(2) and the lease has now expired.)

II. RENT INCREASES SINCE THE LAST NOTICE. Since the last notice of prevailing rent was served, the rent was increased as follows:

Rent accordint to last notice
of prevailing rent : \$ _____ per _____ (time period)

Rent Increases:

A. Allowable Adjustments totalling: \$ _____ per _____ (time period)
(attach each notice of rent increase)

B. Determined by lease executed on
or prior to 10/1/80 totalling : \$ _____ per _____ (time period)
(Attach copy of lease)

C. Determined by lease executed
between 10/2/80 and adjusted by
the CPI ceiling totalling : \$ _____ per _____ (time period)
(attach notices of rent increases and copy of lease)

D. Last rent in effect for unit
prior to new tenant : \$ _____ per _____ (time period)

III. RENT INCREASES SINCE PRIOR TENANT. The rent I am charging you, the new tenant, is higher than the last rent in effect for the prior tenant because of the following:

A. Allowable Adjustments, i.e. increases in my costs since the date that I last raised the rent of the prior tenant, which was on:
_____, the date the notice of rent increase was served or the date the new rent went into effect under the terms of an existing lease executed on or before October 1, 1981.

(See page 2 for calculations.)

NOTICE TO NEW TENANT
P. 2

	Monthly Cost in 12 Month Period Prior to Law Rent Increase To Prior Tenant	Monthly Cost Since Last Rent Increase to Prior Tenant	Amount of Increase
1. Maintenance & Operating Expenses	_____	_____	_____
2. Property Taxes and/or Fees In Connection with the Property.	_____	_____	_____
3. Costs as a result of capital improvements (Amortization schedule must be attached)	_____	_____	_____
4. Allowable Financing Costs	_____	_____	_____
5. Other (Specify): _____	_____	_____	_____
6.		TOTAL	=====
7. Costs Allocated to Tenants Unit is as follows: (Specify method of apportionment for multi-unit building): _____ _____ _____			

[] B. Increases Called For In An Unexpired Lease That Was Executed:

- [] 1. On or prior to 10/1/81
The amount of the increase is: \$ _____
- [] 2. between 10/2/80 and 10/1/81 and adjusted by CPI ceiling. Calculations of the CPI ceiling are attached.
The amount of the increase is. \$ _____

IV. RENT LEVEL FOR NEW TENANT

- A. Last rent in effect for unit prior to new tenant (Section IID of this form) \$ _____ per _____ (time period)
- B. Cost increases since prior tenant (See Section III of this form) \$ _____ per _____ (time period)
- C. Rent for the New Tenant: TOTAL \$ _____ per _____ (time period)

You have a right to examine any documents upon which I have based statements made in this notice.

IF YOU WISH TO DISPUTE THE LEGALITY OF THE RENT BEING CHARGED, YOU MUST FILE A PETITION WITH THE BOARD OF ADJUSTMENTS, COMMERCIAL RENT STABILIZATION OFFICE, 2180 MILVIA STREET, BERKELEY, WITHIN 120 DAYS OF THE DATE THIS NOTICE WAS SERVED ON YOU, BUT NO LATER THAN FIVE (5) YEARS FROM THE EFFECTIVE DATE OF A PARTICULAR RENT LEVEL CHALLENGED.

(Signature) _____ (Address, print) _____

(Name, print) _____

(If you have any questions about the new law, call 644-6175)

NOTICE OF RENT INCREASE/
ALLOWABLE ADJUSTMENT
SECTION 573

TO: (Name of Tenant) _____
(Address of Unit) _____

PLEASE TAKE NOTICE that effective _____ (date) 1/ your rent
will be raised from its present level of:
\$ _____ per _____ (time period) to \$ _____ per _____ (time period)

The amount of the increase constitutes allowable adjustments under the applicable rent law because of the following increases in my costs since the date your present rent was

established on: _____ (date base rent established; or notice of rent increase/allowable adjustment was served on tenant, or date rent went into effect under the lease.)

1/ Note to Landlord: State law prescribes the period for giving written notice of a rent increase. You must fill in the date based upon state law requirements that apply to your situation.

METHOD OF CALCULATING RENT INCREASE/ALLOWABLE ADJUSTMENT

	Monthly Cost in 12 Month Period Ending with Date Present Rent Was Established	Rent Costs Since Present Rent Was Established	Amount of Increase
1. Maintenance & Operating Expenses	_____	_____	_____
2. Property Taxes and/or Fees in Connection with the Property	_____	_____	_____
3. Costs as a result of capital improvements (Amortization schedule must be attached)	_____	_____	_____
4. Allowable Financing Costs	_____	_____	_____
5. Other (specify): _____ _____	_____	_____	_____
6. <u>TOTAL</u>			_____
7.			_____
8. Present Rent + Allowable Adjustments = <u>NEW RENT</u> Costs were allocated to Tenant's Unit as follows: (Specify method of apportionment in your multi-unit building) _____ _____			_____

You have a right to examine any document on which I base these statements within 10 days of your request. If I deny your request, the rent increase will be null and void.

IF YOU WISH TO DISPUTE THE LEGALITY OF THE RENT BEING CHARGED, YOU MUST FILE A PETITION WITH THE BOARD OF ADJUSTMENTS, COMMERCIAL RENT STABILIZATION OFFICE, 2180 MIVLIA STREET, BERKELEY, CALIFORNIA, WITHIN 120 DAYS OF THE DATE THIS NOTICE WAS SERVED ON YOU.

(Signature) _____ (Address) _____

(Name, print) _____

NOTICE OF RETURN TO BASE RENT,
THE RENT IN LAST LAWFUL NOTICE
OF RENT INCREASE
(Authorized by Regulations 571
& 572)

TO: (Name of Landlord) _____

(Address of Landlord) _____

PLEASE TAKE NOTICE that since I have not been served with a:

- ☐ A. Notice of Prevailing Rent as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 571.
- ☐ B. Notice to New Tenant as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 572.

it is my right (under Section 571(c) and (d) or Section 572(c) and (d) to set the rent for my unit at \$ _____ per _____ (time period); which is:
(Note to Tenant: Check and complete applicable section below.)

- ☐ 1. the rent stated in the last lawful notice of rent increase or notice of prevailing rent on file with the Board in the amount of:

\$ _____ per _____ (time period); or, if no such notice is on file.

- ☐ 2. the base rent for the unit. The base rent is required by the Ordinance to be computed by the following method. (Note to Tenant: Check applicable box and set out on a separate sheet of paper, the step by step calculations you made in determining the amounts under the relevant sections of the ordinance. The sheet must be attached to this notice. Include relevant documentation.):

☐ a. Rent in effect on October 1, 1981 (Section 5(b)).

☐ b. Last rent under lease in effect on October 1, 1981 which called for varying rent levels. (Section 5(b)(i)).

☐ c. Gross Sales method. (Section 5(b)(iii)).

☐ d. Rent had not been raised for _____ years prior to June 8, 1982 and therefore the base rent was increased by 5% for each year of no increase for a total increase of:

_____ % to \$ _____. (Section 5(b)(iii))

☐ e. Other: (Cite applicable section of the Ordinance) _____

DUE DILIGENCE I, _____ (name), hereby declare that in order to accurately determine the base rent level for my unit, I have made the efforts described on the attached sheet to secure needed information diligently and in good faith.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, AND THAT THIS DECLARATION WAS EXECUTED AT:

_____, CALIFORNIA ON _____ (date).

The reduced rent will go into effect on: _____; (which is the date the next rent is due, and is at least 30 days from the date this notice is served) unless, prior to this date, you establish a rent level for this unit that takes into account your increased costs by serving me with proper notice on the forms provided by the City of Berkeley.

(Signature) _____ (Address) _____

(Name, print) _____

574 - Administrative Order of Return to Base Rent/Rent In Last Lawful
Notice of Rent Increase

- (a) Any tenant who establishes that he or she has exercised the rights provided by Sections 571(d) or 571(c) to reduce rent as a result of the landlord's failure to comply with the Board's notice requirements shall have the right to obtain an administrative order issued in the name of the Board by the Commercial Rent Control coordinator that the rent will be reduced in the manner provided in such sections.
- (b) Any order obtained shall not be subject to collateral attack in any unlawful detainer or other proceeding but may be appealed to the Board and any decision rendered by the Board on such appeal shall be subject to review by a court of competent jurisdiction under CCP Section 1094.5.

BOARD OF ADJUSTMENTS

CITY OF BERKELEY

_____	}	
	}	
Petitioner,	}	
	}	
vs.	}	REQUEST FOR ADMINISTRATIVE ORDER
	}	
_____	}	TO RETURN TO BASE RENT
	}	
Respondent.	}	
	}	
_____	}	

Because my landlord has not served me with:

- [] A. Notice of Prevailing Rent as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 571.
- [] B. Notice to New Tenant as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 572.

It is my right (under Section 571(c) and (d) or Section 572(d) and (d)) to request an administrative order setting the rent for my unit at:

\$ _____ per _____ (time period) which is:
(Note to Tenant: Check and complete applicable section below)

- [] 1. The rent stated in the last lawful notice of rent increase or notice of prevailing rent on file with the Board in the amount of:

\$ _____ per _____ (time period), or
if no such notice is on file.

- [] 2. The base rent for the unit.

A copy of the notice of Return to Base Rent/Rent In Last Lawful Notice of Rent Increase is on file with the Board of Adjustments, Commercial Rent Stabilization Office, along with a declaration under penalty of perjury, that my landlord was served with the notice on:

_____ (date).

I understand that the landlord may establish a rent level for this unit that takes into account increased costs by serving me with proper notice on the forms provided by the City of Berkeley and filing a copy with the Board of Adjustments.

Accordingly, I am requesting an order stating that the rent for the unit I am renting will be:

\$ _____ (base rent), beginning _____,
(the next rent due date, and at least 30 days from the date this notice was served)

which will remain in effect until the landlord gives me required notice.

Date: _____ (Signature) _____

(Name, print) _____

(Address) _____

CITY OF BERKELEY

T0: Name of Landlord _____ Re: (Address of Rental Unit)
Address _____

[] A. Notice of Prevailing Rent as provided for by the Elmwood Stabilization and Eviction Protection Ordinance and Regulation 571.

[] B. Notice to New Tenant as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 572.

Date: _____

644-6175

Section 850 - Right to Petition

Any landlord, tenant, interested party or neighborhood organization may petition the Board for resolution of any dispute, or question concerning the application or interpretation of the ordinance, provided however that the Board shall not re-hear cases involving the application of the ordinance to particular facts.

Section 851 - Time to Petition

- (a) A petition to determine the validity of a particular rent charge shall be filed within 120 days of:
- (i) the written notice of a rent increase, required by Section 573 if the petition seeks a determination as to the validity of the increase; or
 - (ii) the written notice of the prevailing rent required by Section 572 if the petition seeks a determination of the validity of the rent at the time the ordinance became effective; or
 - (iii) the written notice to a new tenant required by Section 572 if the petition seeks a determination as to the validity of the rent charged such a tenant.
- (b) The time within which an interested party or neighborhood organization may petition the Board on its own behalf shall be 120 days from when copies of notices required by Sections 571, 572 or 573 were filed with the Board. Such an interested party, neighborhood organization, or the City of Berkeley may petition the Board on behalf of a tenant, if such tenant has failed to petition the Board within the time prescribed. Any such petition shall be filed within 30 days of the expiration of the period for the tenant to petition.
- (c) Notwithstanding any other provision of this section, a petition to determine the validity of any rent level shall be filed within 5 years of the date such rent level became effective.

for getting rid of records

Section 852 - Filing of Petitions

- (a) Any landlord, tenant, interested party or neighborhood organization seeking a determination from the Board as to the validity of rent charged or proposed to be charged shall complete a petition on forms provided by the Board to which shall be attached all supporting documents to be relied on by the petitioner at the hearing. An original and ten copies of the petition and attachments shall be filed with the Board along with stamped envelopes addressed to each adverse party along with the filing fee set by the Board. In the case of a landlord petition, the tenant of each affected unit shall be deemed the adverse party. In the case of a tenant petition, the landlord of the affected unit shall be deemed the adverse party. In the case of a petition by an interested party or neighborhood organization, both the landlord and the tenant of the affected unit shall be deemed the adverse party. Upon receipt of a satisfactorily completed petition, the Board shall mail a copy of the petition to each adverse party.
- (b) Within 30 days of the date of the mailing of such a notice each adverse party shall file a response to the petition to which shall be attached all supporting documents to be relied on at the hearing by the respondent(s). An original and 10 copies of the response(s) shall be filed with the Board of Adjustments along with stamped envelopes addressed to each adverse party.

Section 852 - (Continued)

- (c) The case shall be set for hearing within 30 days of the Board's receipt of a completed response and the parties shall be mailed at least fifteen days' written notice of the hearing by the Board.
- (d) Petitions for units in the same building may be consolidated for hearing.
- (e) If no response is received, the case shall be set for hearing within 30 days of expiration of the time to respond prescribed by sub-section (b) and shall be decided on the evidence presented by the petitioner.

CITY OF BERKELEY

ELMWOOD COMMERCIAL RENT
STABILIZATION AND EVICTION
PROTECTION PROGRAM
2180 Milvia Street
Berkeley, California 94704
644-6

(LOGO)

FOR STAFF USE ONLY
Date Filed: _____

APPEAL/REVIEW OF
PREVAILING RENT
(Form No. _____)

I. This petition is to appeal/review a rent level at the following property:

II. Petitioner is

A. ☐ Tenant _____
(name)

(mailing address if different from above)

B. ☐ Owner/Manager _____
(name)

(mailing address if different from above)

C. ☐ Interested Party _____
(name)

(mailing address)

I have an interest in the rents which prevail at
this commercial unit because:

D. ☐ Interested Neighborhood Organization _____
(name)

(mailing address)

I have an interest in the rents which prevail at
this commercial unit because:

III. This appeal/review concerns a rental unit:

- A. ☐ for which there is no existing lease.
- B. ☐ which is subject to an existing lease which was executed on or after October 2, 1981 and thus the unit is subject to provisions of the ordinance regarding base rent and allowable adjustments.
- C. ☐ which is subject to a lease which was executed on or before October 1, 1980 and thus is not subject to the rent limits of the ordinance until the lease expires.
- D. ☐ which is subject to a lease executed between October 2, 1980 and October 1, 1981 and thus, the rents which can be charged under the lease, cannot exceed certain ceilings which are tied to the Consumer Price Index.
- E. ☐ Other (explain) _____

_____.

IV. This petition is being filed to appeal/review:

- A. ☐ a notice of prevailing rent, which was served on the tenant by:
1. ☐ personal delivery on _____
date
 2. ☐ certified mail on _____
date
and filed with the Board on _____
date
- B. ☐ a notice of rent increase which was served on the tenant by:
1. ☐ personal delivery on _____
date
 2. ☐ certified mail on _____
date
and filed with the Board on _____
date
- C. ☐ a notice to a new tenant which was served on the tenant by:
1. ☐ personal delivery on _____
date
 2. ☐ certified mail on _____
date
 3. ☐ the new tenant executed the lease on _____.

COPIES OF THESE NOTICES MUST BE ATTACHED TO PETITION

D. ☐ Other (explain) _____

_____.

V. The questions to be resolved on this appeal/review are:

- A. ☐ whether the base rent for a unit was properly computed.
(Fill out Section VI if you check this box)
- B. ☐ whether the difference between the base rent and the prevailing rent constitutes an allowable adjustment.
(Fill out Section VII if you checked this box)
- C. ☐ whether a rent increase is based on allowable adjustments.
(Fill out Section VII if you checked this box)
- D. ☐ whether rent levels authorized by a lease executed between October 2, 1980 and October 1, 1981 were properly limited to corresponding increases in the Consumer Price Index.
(Fill in Section VIII if you checked this box)

VI. Base Rent (Fill this section out only if your appeal/review relates to the way in which base rent was computed, i.e. you checked IV(A) above)

The amount of the base rent according to the notice served on the tenant is \$ _____ per _____ (time period - e.g. month). It is required by the Ordinance to be computed by the following method:

- A. ☐ Rent in effect on October 1, 1981. (Section 5(b))
- B. ☐ Last rent under lease in effect on October 1, 1981 which called for fixed rent payments of varying amounts (e.g. rents escalating with Consumer Price Index) (Section 5(b)(i)).
- C. ☐ Gross sales method. (Section 5(b)(ii))
- D. ☐ Rent had not been raised for _____ years prior to June 8, 1982 and therefore the base rent was increased by 5% for each year of no increase for a total increase of _____ % to \$ _____. (Section 5(b)(iii)).
- E. ☐ Other (explain) _____

_____.

This appeal/review covers the manner in which base rent is set and the issues are described below:

_____.

VII. Allowable Adjustments (Fill in this section only if your appeal/review relates to whether a rent increase or rent excess over base rent is an allowable adjustment)

The question to be resolved on this appeal/review relates to: whether the amount by which the present rent exceeds either the base rent or the last allowable adjustment is the result of increases in costs since the time the base rent or last allowable adjustment was established.

- A. ☐ the present rent at the unit is \$ _____
per _____.
- B. ☐ the base rent is \$ _____ per _____ and
was established for the period ending _____.
- C. ☐ the rent has been increased to \$ _____
per _____ effective _____
from \$ _____ per _____ date _____ the
old rent, which was established on _____
_____ date _____.
- D. ☐ The Board is asked to resolve questions relating
to the following issues:
- a. ☐ increases in maintenance and operating
expenses: (explain issue) _____

- b. ☐ increases in property taxes and/or fees
in connection with the property (explain
issue) _____

- c. ☐ increased costs for capital improvements
(explain issue) _____

d. ☐ increases in allowable _____
financing costs (explain issue) _____

e. ☐ the manner in which the cost was allocated
to the unit (explain issue) _____

f. ☐ Other _____

VIII Consumer Price Index (CPI) Ceiling on Rents Set by Leases for Fixed Terms
Executed Between October 2, 1980 and October 1, 1981.

- A. Date lease was executed _____ (date).
- B. Rent that would be in effect today under the lease \$ _____.
- C. Date rent in B went into effect _____.
- D. Prior to date specified in A, last rent in effect
for this unit. \$ _____.
- E. Date when rent specified in D went into effect _____.
- F. Difference between rent specified in B and rent
specified in D (B - D). \$ _____.
- G. % increase in lease rent

$$\frac{F \times 100}{D} = \text{_____} \%$$

- H. Consumer Price Index for date in C: 2/ _____ (CPI Number)
- I. Consumer Price Index for date in E: _____ (CPI Number)
- J. Change in CPI (H - I)
- K. % increase in CPI

$$\frac{J \times 100}{I} = \text{_____} \%$$

- L. Indicate G or K, whichever is smaller: _____.
- M. Prevailing rent is lease rent adjusted by CPI ceiling

$$D + (D \times L) = \$ \text{_____}.$$

The issue on this appeal/review relates to: (explain) _____

ATTACHED TO THIS PETITION ARE ALL SUPPORTING DOCUMENTS AND
NOTICES RELEVANT TO THIS PETITION. I UNDERSTAND THAT I WILL
NOT BE ABLE TO INTRODUCE DOCUMENTS AT THE HEARING AND THAT I
COULD HAVE SUBPOENAED ANY DOCUMENTS TO WHICH I DID NOT OTHERWISE
HAVE ACCESS.

Dated:

Signature

Section 853 - Subpoenas

(a) The Board may by subpoena, issued by its staff under its name, require either party or other person to provide any books, records, papers or other evidence deemed relevant to the petition or that any witness appear and testify. Application for a subpoena for records may be made prior to the filing of a petition, but, in any event, must be supported by a declaration under penalty of perjury which states all of the following:

- (1) a description of the documents sought;
- (2) the contents of the documents sought and the manner in which they are relevant to a pending or prospective petition before the Board; and
- (3) if a petition has not yet been filed, that the documents are necessary to the filing of the petition.

(b) Any person subject to a subpoena issued in accordance with subsection (a) may apply for a protective order from the Board if the applicant can establish that:

- (1) the information sought is not relevant to any pending or proposed proceeding before the Board;
- (2) the information sought is immune from disclosure pursuant to a provision of law;
- (3) the interests of the applicant in keeping the information confidential outweighs the interests of the public in disclosure of the information, and thus, that a document or portion thereof should only be subject to examination by the parties to a proceeding before the Board and the Board itself and shall not be disclosed to any other member of the public.

(c) Any application for a protective order shall be in writing and shall state the basis pursuant to subsection (b), on which the protective order is sought; shall specify the terms which the applicants asks to be contained in such order and shall be accompanied by a declaration under penalty of perjury that the person who applied for the subpoena under challenge was served either personally or by certified mail.

(d) Within ten (10) days of the time such application for a protective order has been served in accordance with subsection (b), the party applying for the subpoena shall file with the Board and serve on the applicant for the protective order, either personally or by certified mail, a copy of any such response.

(e) Within ten (10) days of the date such response is filed, or if no response is filed, within ten days of the date the response was due, the matter will be set for a hearing before the Board.

(f) In ruling on the request for the protective order the Board shall have the right to examine the information for which the protective order was sought, if necessary, provided however, that with respect to an application for a protective order under subsection (b)(3) the person who applied for the subpoena shall also be permitted to examine the information relating to which the protective order is sought. The decision of the Board shall be in writing and shall be mailed to the parties within ten days of the hearing.

(g) The time limits to file a petition or to respond shall be tolled during the period that an application for a protective order is pending.

Section 854 - Hearing By Board

All hearings shall be conducted by the Board of Adjustments sitting en banc, which shall have the following powers:

- (a) to administer oaths and affirmations;
- (b) to grant requests for subpoenas, to order the production of evidence, and to issue protective orders;
- (c) to rule upon offers of proof and receive evidence;
- (d) to regulate the course of the hearing and rule upon requests for continuances;
- (e) to call, examine, and cross-examine witnesses, and to introduce evidence into the record;
- (f) to make and file decisions on petitions in accordance with this Chapter;
- (g) to take any other action that is authorized by these regulations or the Ordinance.

Section 855 - Disqualification of Interested Board Member

- (a) No member of the Board of Adjustments shall take part in any hearing on a petition in which she/he has a personal financial interest in the outcome (such as being the landlord of or a tenant residing in, the property that is involved in the petition), or a personal bias for/against any party.
- (b) Board members shall disclose to all parties any prior communications with a party concerning the subject of the petition as well as any possible or apparent personal Financial interest or personal bias.
- (c) Any Board member may disqualify himself or herself at any time. In addition, any party may file a written request for disqualification, stating the grounds with the Board Chairperson at least 72 hours prior to the hearing. Any such request shall be ruled upon prior to the taking of any evidence at the hearing.

Section 856 - Evidence

The Board need not conduct the hearing according to the technical rules of evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of any common law or statutory rule which might exclude such evidence in court proceedings provided however that the decision of the Board as to a material issue of fact may not be based solely on inadmissible hearsay if such hearsay was objected to at the hearing.

Section 857 - Conduct of Hearing

- (a) The party with the burden of proof on the majority of the issues to be determined shall be required to present his or her case first irrespective of whether such party was the petitioner.
- (b) Each party shall have the right to present testimony and to confront and cross-examine adverse witnesses.
- (c) No new documentary evidence shall be presented at the time of the hearing except upon a showing of good cause, and upon the granting of a continuance to the adverse party for a reasonable time if requested.

Section 858 - Decision by the Board

- (a) The decision of the Board shall be in writing and shall be rendered within 45 days of the date of the hearing and shall be mailed to the parties.
- (b) If the Board finds a rent level to be in excess of the limits imposed by the ordinance, it shall adjust the rent downwards effective 30 days from the date of the mailing of the notice. Such adjustment shall provide for and schedule reimbursement to the tenant for any overpayments in rent.
- (c) The decision of the Board shall be final and binding on the thirtieth day after the date it is mailed but may be reviewed by a court of competent jurisdiction pursuant to Code of Civil Procedure Section 1094.5.
- (d) The prevailing party shall be awarded as costs reasonable legal accounting or filing fees incurred in connection with the proceeding before the Board provided however that the Board may in its decision stipulate the manner in which such costs awarded may be recovered.

Section 859 - Hearing Record

The hearing before the Board shall be tape recorded. The tape recording shall be transcribed upon the request of any party who posts in advance the estimated cost of the transcription. Either party, may provide, at his or her own expense, a reporter to transcribe the hearing. The official record of the hearing shall include the petition, the response thereto, all documents introduced into evidence, offers of proof, the decision of the Board and a transcript of the hearing.

Section 1351 - Existing Leases

- (a) Rent in rental units with leases for a fixed term executed on or before October 1, 1981 shall have their rent governed by the terms of the lease until they expire except as provided in sub-section (b) below.
- (b) Leases executed on or after October 2, 1980 up to and including October 1, 1981 shall be subject to the following limitations:
- (i) if the difference between the rent at the time this regulation becomes effective (hereinafter "present rent") and the last rent in effect prior to the execution of the lease (hereinafter "prior rent") exceeds the increase in the Consumer Price Index for the period beginning with the date the prior rent was established and the effective date of the present rent, the rent will be reduced to the amount of the prior rent plus such percentage increase in the Consumer Price Index.
 - (ii) thereafter the rental unit subject to such lease shall have its rent governed by the terms of the lease, provided however that any increase in rent authorized by the lease over a specific period shall not exceed the increase in the Consumer Price Index for the corresponding period and the tenant shall be given 30 days prior written notice of each increase authorized by the lease. (Question for Board - which rent should be the base for calculations under CPI, i.e. original lease rent or rent as reduced by C.P.I.)

September 29, 1982

Legal Department
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Attention: Natalie E. West, City Attorney

Re: Comments on Proposed Regulations Implementing
The Elmwood Commercial Rent Stabilization
and Eviction Protection Ordinance

Ladies and Gentlemen:

We have reviewed the most recent proposed regulations you have put forth for discussion at the special meeting of the Board of Adjustments scheduled for tonight. Although these regulations are responsive to some of the issues we raised in our letters to you of August 23, 1982 and September 7, 1982, there are still unresolved issues which we believe the Board has not yet addressed. In addition, we find some of the regulations which have been drafted either confusing or inconsistent. By this letter, we will set forth both the unresolved issues and our comments on the proposed regulations themselves, in the hope that the Board of Adjustments will adopt our suggestion for a more workable ordinance.

A. Issues Not Addressed By Regulations

1. There are many unanswered questions concerning establishing the base rent:

a. Where demising walls are moved or removed to accommodate a new tenant, how is the base rent determined? We believe that this should be deemed to create "new" space, for which rent at current market rates should be applicable.

b. In a situation such as the one described above, does Section 5(d) of the Ordinance allow all costs of improvement to be passed through to the Tenant?

Legal Department
City of Berkeley
September 29, 1982

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c. Does Section 5(b)(iii) contemplate that all costs under that section may be passed through to Tenants?

2. There are still no regulations drafted regarding petitions for extraordinary rent increases under Section 6 of the Ordinance. Although we understand the points made by the City Attorney, we wish to reiterate our belief that it is difficult to evaluate the regulations drafted thus far without knowing how the City will handle these petitions. Moreover, it is difficult for landlords and tenants alike to enter into agreements without knowing what future regulations on this crucial subject will require or prohibit, and the lack of regulations can work against the interest of tenants as well as landlords.

3. No regulations have been drafted to explain Section 11 of the Ordinance. As a result, the relationship between this Section and Section 8 and its regulations is never explained.

a. Section 11(e) discusses the award of reasonable attorneys' fees to "any party [who] succeeds in obtaining any remedy, in whole or in part." This may not comport with Regulation Section 858(d) which speaks only in terms of a single prevailing party.

b. Section 11(c) implicitly requires a tenant to bring an action within 120 days of a violation of the Ordinance; newly drafted Regulation 851 seems to allow a tenant to bring a petition as long as five years later. How do these two sections relate?

B. Comments On The Proposed Regulations

Section 530 - Maintenance and Operating Expenses

1. Subsection (b)(1): We object to the exclusion of

Legal Department
City of Berkeley
September 29, 1982

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loan costs from refinancing or sale as costs under this section.

2. Subsection 530(b)(5): Does this preclude attorneys' fees or costs clauses in leases?

3. Subsection 530(b)(8): What does "agreed upon payments, or any other method" mean for the purposes of this section which purports to exclude certain reimbursed expenses?

Section 531 - Capital Improvements

1. Subsection (b): One hundred dollars is too low a figure for a capital improvement for the purposes of this action.

2. Subsection (c)(2): This subsection is vague and impractical. How can a capital improvement realistically be determined to be "provided by the landlord in good faith to primarily benefit the tenant"? Moreover, why should the landlord be bound by this standard when it is the landlord, not the tenant, who presumably is concerned with long-term needs of the building?

3. Subsection (f): This subsection should be revised to include the phrase "whichever is less" after the word "affected" on line 4.

Section 571 - Notice of Prevailing Rent

1. Subsection (a)(v): Five years is too long a period to allow a challenge to a rent level. Moreover, this subsection is unclear in many respects:

(a) What is the origin of the 5-year statute of limitations to contest the validity of the rent? This number appears for the first time in these regulations.

(b) In addition, what is the "effective date of any rent level being challenged"? Is the "effective date" that date on which the rent is actually due, or is it that

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September 29, 1982

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date on which the tenant is informed what the rent will be on a certain date?

(c) This subsection speaks in terms of "the effective date of any rent level being challenged" (emphasis added). However, the form entitled "Notice of Prevailing Rent", uses the phrase "the effective date of a particular rent level challenged" (emphasis added). Is this difference significant?

Section 572 - Notice to New Tenant

1. Subsection (a)(v): We raise the same objection as in Subsection 571(a)(v) to the five-year statute of limitations. We note further that this subsection speaks of "any particular rent" challenged, and that the form entitled "Notice to New Tenant" speaks of "a particular rent level challenged." The language in these subsections should be made consistent.

Section 850 - Right to Petition

1. Does the provision that Board "shall not re-hear cases involving the application of the ordinance to particular facts" override the provision allowing a party to petition to determine the validity of a rent level any time within five years of the date the rent level became effective?

Section 851 - Time To Petition

1. Subsections (a) and (c): How do these sub-sections relate to each other? What is the difference between a "petition to determine the validity of a particular charge" and "a petition to determine the validity of any rent level?" Why is there such a great disparity in the statute of limitations for each?

Section 852 - Filing of Petitions

1. Subsection (b) - Does the Board of Adjustments itself mail the response to the petition to the adverse parties?

2. How are the time periods in this section affected by the intervention of third parties?

3. Subsection (c) - Does the Board send written notice of the hearing by certified mail? Is the effective date of service calculated here according to the terms of Regulation Section 151?

Section 853 - Subpoenas

Contrary to the City Attorney's analysis of the written comments received (Exhibit E-4 to her Memorandum of September 23, 1982 to the Board of Adjustments), this section does not make clear when in the petition process subpoenas are ordinarily to be issued.

1. Subsection (b): This subsection should make clear that a person can seek a protective order if it can establish any one of the requirements listed as subsections (b)(1), (b)(2) and (b)(3).

2. Subsection (c): This should be revised to make clear what the subpoenaing party must be served with -- i.e., a copy of the application for protective order.

3. Subsection (f): Any examination of confidential data burdens the subpoenaed party, whether the examination is by the person applying for the subpoena or by the public at large.

Section 854 - Hearing by Board

This section does not establish what vote is required to rule on a petition. Is it sufficient to have a majority of the quorum, or must there be a majority of the entire Board?

Section 856 - Evidence

We are still concerned with the question of who will make the difficult and technical evidentiary determinations at the hearings. The City Attorney states that "the City is not a party, and the City Attorney will be acting as counsel for the

Legal Department
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September 29, 1982

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Board of Adjustments." (See Exhibit E-6 to City Attorney's Memorandum of September 23, 1982.) This statement is incorrect; Section 8(a) of the Ordinance expressly states that in certain circumstances the City Attorney "may petition" or "otherwise appear" in disputes over the meaning or application of this Ordinance. Who will act as counsel for the Board of Adjustments when the City is a party or is petitioning on behalf of another group?

Section 858 - Decision by the Board

1. Subsection (d) - Does this subsection conflict with the definitions of "prevailing party" and provisions for awarding costs set forth in Section 11(c) of the Ordinance?

We hope that these comments will be helpful in the effort to produce practical and workable regulations. We will be happy to discuss our comments with you at the meeting tonight.

Very truly yours,

Hal Brendel

CITY OF BERKELEY

DATE: October 8, 1982

Memorandum

TO: BOARD OF ADJUSTMENTS

FROM: NATALIE E. WEST, City Attorney

SUBJECT: ADOPTION OF REGULATIONS IMPLEMENTING THE ELMWOOD COMMERCIAL RENT
STABILIZATION AND EVICTION PROTECTION ORDINANCE "MEASURE I"

I. Purpose of the Hearing

This hearing is a continuation of a special hearing held on September 29, 1982 to consider final adoption of regulations implementing Measure I. The regulations which were recommended by staff for adoption contained revisions proposed by the public. The Board was unable to take any action that night for lack of a quorum. Thus, a second hearing was set for October 11, 1982 at 7:15 p.m. and this item was placed on the Board's regular meeting agenda. The regulations attached to this memorandum contain further revisions which were made in response to oral and written comments by the public at the September 29, 1982 meeting. These are discussed in greater detail below.

II. The Latest Revisions

Only the most significant comments received are discussed in the body of this memorandum. The other comments are attached to this memorandum and contain a staff response following each comment.

There were four significant issues raised at the September 29, 1982 meeting:

A. In determining base rent, should the degree of compliance with the Renters Property Tax Relief Ordinance of 1978 ("old" Measure I) be considered?

B. Should there be a ceiling on the amount of increase permissible in any one year, and should the Board require that increases over a specified percentage be phased in?

C. Does the regulation on capital improvement unduly emphasize the importance of a tenant's consent to such an improvement?

D. Section 1351 is unclear.

I address each issue in turn.

A. The Effect of "Old" Measure I

Old Measure I was enacted by the voters in 1978 and required that rents be reduced in 1979 in order to refund to tenants 80% of the tax savings realized by landlords as a result of the passage of Proposition 13. It applied to commercial rental units. After January 1, 1980, however, the amount of the rent which could be charged in commercial units was not regulated. Although the ordinance provided that "the notice to the renter of [an increase after January 1, 1980] shall contain a clear and detailed financial statement which documents the reasons for such an increase." (Section 13).

CITY OF BERKELEY

DATE: October 8, 1982

Memorandum

TO: BOARD OF ADJUSTMENTS

FROM: NATALIE E. WEST, City Attorney

SUBJECT: ADOPTION OF REGULATIONS IMPLEMENTING THE ELMWOOD COMMERCIAL RENT
STABILIZATION AND EVICTION PROTECTION ORDINANCE "MEASURE I"

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Mr. Schiffenbauer urges the following interpretations of this section:

1. all increases in rent even if authorized by the lease be preceded by a Section 13 notice;
2. failure to give such notices voids the increase.

Although the argument is persuasive in the residential control context, where the amount and basis of a rent increase is also regulated, this approach is more troublesome when applied to commercial units since the amount and basis for rent increases was not regulated for a period of two and a half years. It is therefore recommended that the failure to give an "old" Measure I notice prior to a rent increase not be construed to void all such increases in the years 1980, 1981 and 1982.

B. Phase in of Increases Over a Certain Prescribed Percentage

The requirement in the present regulations that non-recurring expenses and capital improvements be amortized will result in most cases in protecting tenants from an extremely large increase in any one year. Mr. Schiffenbauer is correct however, in pointing out that a large improvement coupled with the cost of financing it could result in an unusually large increase in the first year. This problem could also be compounded by adoption of reasonable rate of return regulations. It is therefore recommended that staff explore the possibility of issuance of a regulation of the sort proposed in the course of developing regulations concerning "reasonable rate of return."

C. Capital Improvements

Ms. Susan Passovoy, an attorney representing Elmwood landlords expressed concern that the capital improvements regulation would: 1) result in preventing a landlord from undertaking an improvement which was necessary to the structural integrity of the building; and, 2) placed undue emphasis on the role of the tenant. No alternative language was suggested however.

With respect to the first point, Ms. Passovoy's concerns appear to be unfounded since repairs to "maintain compliance" with code requirements is clearly a permissible cost which can be passed through to the tenant.

The second method of obtaining a capital improvement has been modified in an attempt to address Ms. Passovoy's concerns. It now provides that such improvements must benefit (as opposed to "primarily benefit") the tenant. Moreover, it is conclusively presumed that such a benefit was conferred if, prior to undertaking the improvement, the landlord has given the tenant notice of the maximum increase in rent which will result from the improvement and the tenant or other interested party has failed to file a written objection within 30 days.

change
→

344-431

CITY OF BERKELEY

DATE: October 8, 1982

Memorandum

TO: BOARD OF ADJUSTMENTS

FROM: NATALIE E. WEST, City Attorney

SUBJECT: ADOPTION OF REGULATIONS IMPLEMENTING THE ELMWOOD COMMERCIAL RENT
STABILIZATION AND EVICTION PROTECTION ORDINANCE "MEASURE I"

p.3

D. Section 1351 - Existing Leases

This Section has been clarified.

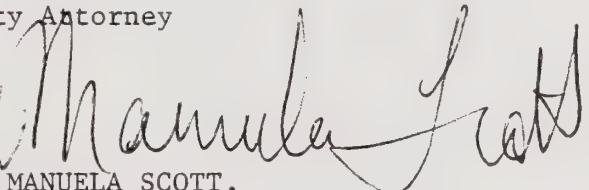
III. Recommendation

It is therefore recommended that the attached resolution be adopted which:

1. Adopts the attached regulations as regulations of the Board;
2. Sets a petition filing fee of \$100 for the first unit and \$20 for each additional unit in the same building; and
3. Authorizes the staff to modify any forms if in their judgment, any modifications appear to be necessary.

NATALIE E. WEST,
City Attorney

By


MANUELA SCOTT,
Deputy City Attorney

The following is a letter received from one of the building owners in the Elmwood District (Harold Brandel), interjected appropriately with the Staff analysis/response.

September 29, 1982

Legal Department
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Attention: Natalie E. West, City Attorney

Re: Comments on Proposed Regulations Implementing
The Elmwood Commercial Rent Stabilization
and Eviction Protection Ordinance

Ladies and Gentlemen:

We have reviewed the most recent proposed regulations you have put forth for discussion at the special meeting of the Board of Adjustments scheduled for tonight. Although these regulations are responsive to some of the issues we raised in our letters to you of August 23, 1982 and September 7, 1982, there are still unresolved issues which we believe the Board has not yet addressed. In addition, we find some of the regulations which have been drafted either confusing or inconsistent. By this letter, we will set forth both the unresolved issues and our comments on the proposed regulations themselves, in the hope that the Board of Adjustments will adopt our suggestion for a more workable ordinance.

A. Issues Not Addressed By Regulations

1. There are many unanswered questions concerning establishing the base rent:

a. Where demising walls are moved or removed to accommodate a new tenant, how is the base rent determined? We believe that this should be deemed to create "new" space, for which rent at current market rates should be applicable.

b. In a situation such as the one described above, does Section 5(d) of the Ordinance allow all costs of improvement to be passed through to the Tenant?

c. Does Section 5(b)(iii) contemplate that all costs under that section may be passed through to Tenants?

Staff Response

The Ordinance expressly provides that the base rent of the two units consolidated would be combined to arrive at the base rent of the unit. Any costs of remodeling would have to be justified as an allowable capital improvement. Moreover, the Ordinance expressly provides that the expansion or renovation of an existing rental unit is not to be considered the construction of a new rental unit.

2. There are still no regulations drafted regarding petitions for extraordinary rent increases under Section 6 of the Ordinance. Although we understand the points made by the City Attorney, we wish to reiterate our belief that it is difficult to evaluate the regulations drafted thus far without knowing how the City will handle these petitions. Moreover, it is difficult for landlords and tenants alike to enter into agreements without knowing what future regulations on this crucial subject will require or prohibit, and the lack of regulations can work against the interest of tenants as well as landlords.

Staff Response

The two categories of regulations need not be adopted simultaneously. Failure to adopt regulations in "maintenance of net operating income" disputes would be an abdication of the Board's obligations under the Ordinance to adopt procedures for resolving such disputes within a reasonable time.

3. No regulations have been drafted to explain Section 11 of the Ordinance. As a result, the relationship between this Section and Section 8 and its regulations is never explained.

a. Section 11(3) discusses the award of reasonable attorneys' fees to "any party (who) succeeds in obtaining any remedy, in whole or in part." This may not comport with Regulation Section 858(d) which speaks only in terms of a single prevailing party.

b. Section 11(c) implicitly requires a tenant to bring an action within 120 days of a violation of the Ordinance; newly drafted Regulation 851 seems to allow a tenant to bring a petition as long as five years later. How do these two sections relate?

Staff Response

(a) Incorporated in Section 858.

(b) A new tenant would have to file a petition within 120 days of service of the Notice to New Tenant (Section 572) but cannot challenge an "old" rent level (i.e. where the tenant in occupancy at the time failed to challenge it) more than five years after its operative date.

B. Comments On The Proposed Regulations

Section 530 - Maintenance and Operating Expenses

1. Subsection (b)(1): We object to the exclusion of loan costs from refinancing or sale as costs under the section.

Staff Response

See previous response on Page E 4 Section 2(d) on the staff report dated September 23, 1982.

2. Subsection 530(b)(5): Does this preclude attorneys' fees or costs clauses in leases?

Staff Response

No. Indeed, this is how such costs should be recovered.

3. Subsection 530(b)(8): What does "agreed upon payments, or any other method" mean for the purposes of this section which purports to exclude certain reimbursed expenses?

Staff Response

Payments made under an out-of-court settlement is one example.

Section 530 - Capital Improvements

1. Subsection (b): One hundred dollars is too low a figure for a capital improvement for the purposes of this action.

2. Subsection (c)(2): This subsection is vague and impractical. How can a capital improvement realistically be determined to be "provided by the landlord in good faith to primarily benefit the tenant"? Moreover, why should the landlord be bound by this standard when it is the landlord, not the tenant, who presumably is concerned with long-term needs of the building?

3. Subsection (f): This subsection should be revised to include the phrase "whichever is less" after the word "affected" on line 4.

Staff Response

1. This amount has been increased to \$250.

2. This section has been revised to reverse the presumption in favor of the landlord when the tenant fails to object. This point is discussed in greater detail in the body of the staff report.

3. This has been incorporated.

Section 571 - Notice of Prevailing Rent

1. Subsection (a)(v): Five years is too long a period to allow a challenge to a rent level. Moreover, this subsection is unclear in many respects:

(a) What is the origin of the 5-year statute of limitations to contest the validity of the rent? This number appears for the first time in these regulations.

(b) In addition, what is the "effective date of any rent level being challenged"? Is the "effective date" that date on which the rent is actually due, or is it that date on which the tenant is informed what the rent will be on a certain date?

(c) This subsection speaks in terms of "the effective date of any rent level being challenged" (emphasis added). However, the form entitled "Notice of Prevailing Rent", uses the phrase "the effective date of a particular rent level challenged" (emphasis added). Is this difference significant?

Staff Response

1.(a) The IRS imposes a record-keeping burden of seven years. This period is two years shorter.

1.(b) and (c) The language has been changed to be consistent, and the word "operative" has been substituted for "effective".

Section 852 - Filing of Petitions

1. Subsection (b) - Does the Board of Adjustments itself mail the response to the petition to the adverse parties?

2. How are the time periods in this section affected by the intervention of third parties?

3. Subsection (c) - Does the Board send written notice of the hearing by certified mail? Is the effective date of service calculated here according to the terms of Regulations Section 151?

Staff Response

1. Yes; Section has been revised.

2. Can be determined by the Board at the time of intervention.

3. Yes; Section has been revised to so provide, and time periods will be calculated under Section 151.

Section 853 - Subpoenas

Contrary to the City Attorney's analysis of the written comments received (Exhibit #-4 to her Memorandum of September 23, 1982, to the Board of Adjustments), this section does not make clear when in the petition process subpoenas are ordinarily to be issued.

1. Subsection (b): This subsection should make clear that a person can seek a protective order if it can establish any one of the requirements listed as subsections (b)(1), (b)(2), and (b)(3).

2. Subsection (c): This should be revised to make clear what the subpoenaing party must be served with -- i.e., a copy of the application for protective order.

3. Subsection (f): Any examination of confidential data burdens the subpoenaed party, whether the examination is by the person applying for the subpoena or by the public at large.

Staff Response

Subpoenas are not "ordinarily" issued at any particular time - it depends. See Page E-4, Section F.2 for previous staff response.

1. and 2. Section has been revised.

3. If it is relevant, and not privileged, the adverse party has a right to examine it.

Section 854 - Hearing by Board

This section does not establish what vote is required to rule on a petition. Is it sufficient to have a majority of the quorum, or must there be a majority of the entire Board?

Staff Response

Section has been revised to state that a decision must be made by the majority of the Board.

Section 856 - Evidence

We are still concerned with the question of who will make the difficult and technical evidentiary determinations at the hearings. The City Attorney states that "the City is not a party, and the City Attorney will be acting as counsel for the Board of Adjustments." (See Exhibit E-6 to City Attorney's Memorandum of September 23, 1982.) This statement is incorrect; Section 8(a) of the Ordinance expressly states that in certain circumstances the City Attorney "may petition" or "otherwise appear" in disputes over the meaning or application of this Ordinance. Who will act as counsel for the Board of Adjustments when the City is a party or is petitioning on behalf of another group?

Staff Response

It is unlikely that the City will be a party.

Section 858 - Decision by the Board

1. Subsection (d) - Does this subsection conflict with the definitions of "prevailing party" and provisions for awarding costs set forth in Section 11(c) of the Ordinance?

Staff Response

Section 858 has been revised.

We hope that these comments will be helpful in the effort to produce practical and workable regulations. We will be happy to discuss our comments with you at the meeting tonight.

Very truly yours,

/s/Harold Brandel

INDEX OF REGULATIONS

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152	Calculation of time-service by mail
400	Definitions
401	" Board"
402	" Ordinance "
530	Maintenance and Operating Expenses
531	Capital Improvements and Attached Schedule
571	Notice of Prevailing Rent
572	Notice to New Tenants
573	Notice of Rent Increases
574	Administrative Order of Return to Base Rent/ Rent in Last Lawful Notice of Rent Increase
850	Right to Petition
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Section 151 - Manner of Service

All papers which are required by these regulations to be served shall either be personally delivered or sent by certified mail.

Section 152 - Calculation of Time - Service by Mail

For purposes of calculating the time periods specified in the ordinance and implementing regulations, notices served by certified mail shall be deemed served five days after the date they were mailed.

Section 531 - Capital Improvements

- a) Purpose. The purpose of this Section is to ensure that the costs of capital improvements are amortized over a reasonable period of time and are paid for by all tenants who benefit from them.
- b) Capital Improvement. A capital improvement shall be any improvement to a unit or property which has a useful life of more than one year and a direct cost of \$250 or more per unit affected.
- c) Policy. The rent ceilings for a unit or property may be adjusted to reflect the amortized cost of planned or completed capital improvements to the unit or property:
 - (1) where such capital improvements are necessary to bring the unit or property into compliance or maintain compliance with applicable local code requirements affecting health and safety, or the integrity of the structure provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased property damage and deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement; or

(2) to the extent that such capital improvements are provided by the landlord in good faith to benefit the tenant. It shall be conclusively presumed that a specific capital improvement, or portion thereof is so provided if, prior to undertaking the improvement, the landlord serves on the tenant of the affected unit and files with the Board, written notice, on a form provided by the Board, which sets forth the maximum increase in rent per affected unit which would result from the improvement, and/or each portion thereof, and, within 30 days of service of such notice, the tenant fails to serve on the landlord, and file with the Board, a written objection to such improvement or portion thereof.

- d) Amortized Cost. The annual amortized cost of a capital improvement shall be calculated according to the following formula: the reasonable cost of the capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement.
- e) Cost of Financing. The cost of financing a capital improvement shall be the actual and reasonable amount of interest and other charges paid to the lender in connection with that portion of any loan necessary to cover the cost of financing.
- f) Imputed Financing. If a landlord has financed the capital improvement with her/his own funds, in whole or in part, and the improvement costs at least \$1000, or a least \$250 per unit

affected, whichever is less, the Cost of Financing for that part shall be deemed to be the amount of financing costs the landlord would have incurred had the landlord financed the capital improvement with a three year loan (or a loan for the period of the useful life of the improvement, whichever is less) at an interest rate equal to the average rate for 26-week U.S. Treasury Bills for the most recent calendar quarter preceding the filing of the petition.

- g) Amortization Schedule. The cost of a capital improvement shall be amortized according to a schedule to be established by the Board, unless there is a specific finding that a different time period is more appropriate in a particular instance. For capital improvements not listed in the schedule, the Board shall determine a reasonable amortization period based on all relevant factors.
- h) Future Improvements. In order to encourage necessary capital improvements, a landlord may petition for an upward rent adjustment based upon the anticipated future cost of a capital improvement. If the adjustment is granted in whole or in part, it shall not take effect until the capital improvement is completed, and its actual cost and completion is documented to the Board. Adjustments under this subsection shall not be made for anticipated costs for ordinary repairs and maintenance.

Section 571 - Notice of Prevailing Rent

(a) Except as provided in subsection (b) within thirty (30) days of the adoption of this regulation by the Board, every landlord of commercial premises in the geographical area covered by the Ordinance shall serve the tenant of each rental unit in such premises with written notice on a form provided by the Board which states all of the following:

- i) the base rent for the rental unit;
- ii) the method by which the base rent is required to be computed under the Ordinance;
- iii) if the rent currently charged the tenant exceeds the base rent for the rental unit, the basis on which the excess is claimed to be an allowable adjustment and the manner in which it is allocated to the tenant's rental unit;
- iv) that the tenant has a right to examine all documents on which the landlord relies in claiming that the rent charged is legally permissible; and
- v) that the tenant has a right to petition the Board within 120 days of the date the notice was served in order to contest the validity of the rent being charged, and may challenge any rent level within five (5) years of its operative date (this statement shall be in capital letters and shall be underlined).

Section 571 (Continued)

- (b) Landlords of rental units subject to existing leases for a fixed term which specify the amount or manner of computing rent and which were executed on or before October 1, 1981, shall serve each tenant of such rental units with a notice which states:
- i) that the rent for the rental unit will be governed by the existing lease until it expires;
 - ii) the date on which the lease is scheduled to expire, unless the lease or the ordinance provides that the lease be renewed;
 - iii) the method by which the base rent is required to be computed under the applicable section of the ordinance when the lease expires; and
 - iv) if the lease was executed on or after October 2, 1980, and the difference between the rent charged prior to the execution of the lease (hereafter "prior rent") and the rent in effect under the terms of said lease on June 8, 1982 (hereafter "present rent") exceeds the increase in the Consumer Price Index, for the period beginning the first date that the prior rent became operative to the first date that the present rent became operative, that retroactive to the date the present rent was established or June 8, 1982, whichever is later, the rent be immediately reduced to the prior rent plus such increase in the Consumer Price Index, and that rent overpaid since June 8, 1982 will be refunded.

- v) within 30 days of the date any such existing lease expires, the landlord shall serve the tenant of the rental unit the notice described in subsection (a). If under the terms of such lease or the ordinance, a party is given a right to renew the lease, and the right is exercised, the notice required by subsection (a) shall be given within 30 days of the date such renewal lease expires.
- (c) A copy of the notices required by subsections (a) and (b) shall be filed with the Board with an attached declaration under penalty of perjury that the tenant has been served.
- (d) If the notice required by subsection (a) is not given, within the period set forth in that section, the tenant, shall have the right to serve on the landlord a written notice which states all of the following:
 - i) that, as of the date of the next rent payment due at least 30 days from date of service of the notice the maximum legal rent for the rental unit shall be the base rent for the rental unit, unless the landlord complies with the notice requirement of subsection (a) before that date;
 - ii) the amount of the base rent for the rental unit; and
 - iii) the method by which the base rent is required to be computed under the ordinance and a declaration under penalty of perjury that a good faith and diligent attempt was made to correctly calculate the base rent

for the rental unit, the information used to calculate base rent, and the manner in which it was calculated;

- iv) a copy of the notice shall be filed with the Board along with a declaration under penalty of perjury that the notice was served on the landlord.
- (e) If within the period specified in the notice by the tenant pursuant to subsection (d), the landlord has failed to serve the tenant with the notice required by subsection (a), the maximum legal rent for the rental unit shall be the base rent specified in the notice served on the landlord pursuant to subsection (d) effective the date of the next rent payment, due at least 30 days from the date of service of that notice and continuing in effect until the next rent payment due at least two weeks from the date the landlord serves on the tenant and files with the Board the notice required by subsection (a).

NOTICE OF PREVAILING RENT
(Required by Board
Regulation 571)

TO: (Name of Tenant) _____

(Address of Rental Unit) _____

THIS NOTICE CONCERNS THE PREVAILING RENT OF YOUR UNIT:

1. PREVAILING RENT - Landlords, check and complete one of the following:

- [] A. Your unit has no existing lease or it is subject to an existing lease which was executed on or after October 2, 1981. This means that your prevailing rent is equal to the base rent plus any allowable adjustments for expenses that have increased since the end of the period used for calculating base rent.

Base Rent \$ _____ per _____ (Time period)
(See Section II of this form for details)

Allowable Adjustments \$ _____ per _____ (Time period)
(See Section III of this form for details)

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

- [] B. Your unit is subject to a lease for a fixed term which was executed on or before October 1, 1980 and thus is not subject to the rent limits of the Ordinance until the lease expires. This means that the prevailing rent is equivalent to the rent specified in the lease.

The lease expires on: _____.

(Note to Landlord: Do not fill in the date if the lease contains a renewal option or the ordinance gives either party a right to renew the lease.)

At the time of the lease expiration, the base rent is required to be computed under section _____ of the Ordinance.

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

- [] C. Your unit is subject to a lease for a fixed term executed between October 2, 1980 and October 1, 1981. The prevailing rent is the lease rent adjusted by the CPI ceiling as calculated in Section IV of this form until the lease expires.

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

- [] D. Other. Explain: _____

PREVAILING RENT (TOTAL) \$ _____ per _____ (Time period)

On the Back of This Notice Are Sections Explaining The Calculations of Base Rent, Allowable Adjustments and CPI Ceiling on Lease Rents. Relevant Support Documents are Attached.

IF YOU WISH TO DISPUTE THE LEGALITY OF THE RENT BEING CHARGED, YOU MUST FILE A PETITION WITH THE BOARD OF ADJUSTMENTS, COMMERCIAL RENT STABILIZATION OFFICE, 2180 MILVIA STREET, BERKELEY, CALIFORNIA WITHIN 120 DAYS OF THE DATE THIS NOTICE WAS SERVED ON YOU. THIS PETITION MUST NOT CHALLENGE ANY RENT LEVEL MORE THAN FIVE (5) YEARS FROM ITS OPERATIVE DATE.

Signature _____ (Address, print) _____

(Name, print) _____

II. BASE RENT

The amount of the base rent is \$ _____ per _____ (time period).
It is required by the Ordinance to be computed by the following method:

- [] A. Rent in effect on October 1, 1981 (Section 5(b)).
- [] B. Last rent under lease in effect on October 1, 1981 which called for fixed payments of varying amounts (Section 5(b)(i)).
- [] C. Gross sales method. (Section 5(b)(ii)).
- [] D. Rent had not been raised for _____ years prior to June 8, 1982 and therefore the base rent was increased by 5% for each year of no increase for a total of _____ % to \$ _____. (Section 5(b)(iii)).
- [] E. Other. Explain: _____

(Note to Landlord: Check applicable box above and set out on a separate sheet the step-by-step calculation you made in determining the amounts under relevant sections of the ordinance. The sheet must be attached to this notice.)

III. ALLOWABLE ADJUSTMENTS

The end of the period used for calculating base rent is _____ ^{1/} and is referred to below as the "base rent date." The amount of Allowable Adjustments to the Base Rent is: \$ _____ per _____ (time period). It is the total of the increase in the following expenses incurred since the base rent date.

	Monthly Cost in 12 month period ending with base rent date.	Monthly Cost since base rent date.	Amount of Increase
1. Maintenance & Operating Expenses	_____	_____	_____
2. Property taxes and/or fees in connection with property.	_____	_____	_____
3. Costs as a result of capital improvements (Amortization schedule must be attached)	_____	_____	_____
4. Allowable financing costs	_____	_____	_____
5. Other (Specify) _____	_____	_____	_____
6. TOTAL		_____	_____
7. The way in which these costs are allocated to your building is as follows: (Set out calculations for multi-unit buildings.)	_____ _____		

1/ Note to Landlord - This date will depend upon the method you are required to use to calculate base rent, e.g., if your base rent is calculated by the method set forth in 11(B) above, the base rent date will be the date the lease expired.

IV. Consumer Price Index (CPI) Ceiling on Rents Set by Leases for Fixed Terms
Executed Between October 2, 1980 and October 1, 1981.

- A. Date lease was executed _____ (date).
- B. Rent that would be in effect today under the lease \$ _____.
- C. Date rent in B went into effect _____.
- D. Prior to date specified in A, last rent in effect
for this unit. \$ _____.
- E. Date when rent specified in D went into effect _____.
- F. Difference between rent specified in B and rent
specified in D (B - D). \$ _____.
- G. % increase in lease rent

$$\frac{F \times 100}{D} = \text{_____} \%$$

- H. Consumer Price Index for date in C: ^{2/}_____ (CPI Number)
- I. Consumer Price Index for date in E: _____ (CPI Number)
- J. Change in CPI (H - I)
- K. % increase in CPI

$$\frac{J \times 100}{I} = \text{_____} \%$$

- L. Indicate G or K, whichever is smaller: _____.
- M. Prevailing rent is lease rent adjusted by CPI ceiling

$$D + (D \times L) = \$ \text{_____}.$$

NOTE

From now on the rent in your unit will be that set by your current lease until it expires, but no increase authorized may exceed the increase in CPI during a corresponding period.

The lease will expire on: ^{3/}_____

At that time the lease rent is required to be computed under Section _____ of the Ordinance. You are entitled to 30 days written notice of each such increase.

2/ Note to Landlord: Use All Items Consumer Price Index for All Consumer; S.F.-Oakland, CA; indicate index number for closest publication date. This index is published bimonthly for the S.F.-Oakland Metropolitan Area and is available at the Reference Desk of the Berkeley Main Library (644-6648) and the Claremont Branch Library (644-6880).

3/ Note to Landlord: Do not fill in this date if your lease or the Ordinance gives either party the right to renew the lease.

572 - Notice to New Tenant

- (a) Any new tenant who enters into a rental agreement whether written or oral after the adoption of this regulation shall, prior to his or her execution of such a rental agreement be provided with a written notice by the landlord on the form provided by the Board, which states all of the following:
- i) the base rent for the rental unit;
 - ii) the method by which the base rent is required to be computed under the Ordinance;
 - iii) for each time the rent was increased, whether the previous tenants received the notices required by the ordinance and implementing regulations and a copy of each such notice shall be attached; provided, however, that if the rental unit has been subject to a lease, for a fixed term the new tenant shall be served with the notice required by Section 571.
 - iv) if the rent charged the new tenant exceeds the rent charged the previous tenant, the basis on which the increase is contended to be an allowable adjustment;
 - v) that the tenant has a right to examine all documents on which the landlord relies in claiming that the rent charged is legally permissible; and
 - vi) that the tenant has a right to petition the Board within 120 days of the date the notice was served in order to contest the validity of the rent being charged, and may challenge any rent level within 5 years of its operative date (this statement shall be in capital letters and shall be underlined).

572 - Notice to New Tenant (Continued)

- (b) A copy of the notice required by subsection (a) shall be filed with the Board along with a declaration under penalty of perjury that a copy was provided to the new tenant.
- (c) If a landlord fails to provide to the new tenant and file with the Board the notice required by subsection (a), the new tenant may serve the landlord with a written notice on a form provided by the Board which states all of the following:
 - i) that, as of the date of the next rent payment due at least 30 days from the date of service of the notice, the maximum legal rent for the rental unit shall be the base rent for that rental unit or the amount specified in the last lawful Notice of Rent Increase served on a tenant at the rental unit and filed with the Board, whichever is greater; provided however that for purposes of this subsection, only, a Notice of Rent Increase will be considered "lawful" if it has not been invalidated by order of the Board;
 - ii) that the rent will not be reduced in the manner described in subsection (c)(i) if the landlord complies with the notice provisions of subsection (a) before the effective date of the reduction in rent authorized by this Section;
 - iii) the amount of the reduced rent set in accordance with subsection (c)(i);
 - iv) if the amount of the reduced rent is the base rent,

the method by which the base rent is required to be computed under the ordinance, and a declaration under penalty of perjury, stating that a good faith and diligent attempt was made to correctly calculate the base rent for the rental unit, the specific good faith efforts made, the information used to calculate the base rent, and the manner in which it was calculated.

- (d) A copy of the notice authorized by subsection (c) shall be filed with the Board along with a declaration under penalty of perjury stating the date and manner in which the landlord was served.
- (e.) If, within the time period specified in the notice by the tenant, pursuant to subsection (c) the landlord has failed to serve the new tenant with the notice required by subsection (a), the maximum legal rent shall be the rent specified in the notice served on the landlord pursuant to subsection (c) effective the date of the next rent payment due at least 30 days from the date of service of that notice, and continuing in effect until the next rent payment due at least two weeks from the date the landlord serves and files with the Board, the notice required by subsection (a).

NOTICE TO NEW TENANT
(Required by Board
Regulation 572)

TO: (Name of Tenant) _____
(Address of rental unit) _____

I. LAST PREVIOUS NOTICE SERVED: (date) _____. The last Notice of Prevailing Rent which was served on the previous tenant indicated that:

[] A. The amount and basis for the base rent and all allowable adjustments. The notice is attached.
The base rent is \$ _____ per _____ (time period).
was established on _____ (date).

[] B. The base rent had not yet been established because:

[] 1. The rent of the unit was previously subject to a lease executed on or before October 1, 1980.

OR

[] 2. The rent of this unit was previously subject to a lease executed between October 2, 1980 and October 1, 1981, adjusted by a CPI ceiling.

(Note to Landlord: You must serve a notice of prevailing rent on the new tenant if you checked either B(1) or B(2) and the lease has now expired.)

II. RENT INCREASES SINCE THE LAST NOTICE. Since the last notice of prevailing rent was served, the rent was increased as follows:

Rent according to last notice of prevailing rent : \$ _____ per _____ (time period)

Rent Increases:

A. Allowable Adjustments totalling: \$ _____ per _____ (time period)
(attach each notice of rent increase)

B. Determined by lease executed on or prior to 10/1/80 totalling : \$ _____ per _____ (time period)
(Attach copy of lease)

C. Determined by lease executed between 10/2/80 and 10/1/81 and adjusted by the CPI ceiling totalling : \$ _____ per _____ (time period)
(attach notices of rent increases and copy of lease)

D. Last rent in effect for unit prior to new tenant : \$ _____ per _____ (time period)

III. RENT INCREASES SINCE PRIOR TENANT. The rent I am charging you, the new tenant, is higher than the last rent in effect for the prior tenant because of the following:

A. Allowable Adjustments, i.e. increases in my costs since the date that I last raised the rent of the prior tenant, which was on:

_____, the date the notice of rent increase was served or the date the new rent went into effect under the terms of an existing lease executed on or before October 1, 1981.

(See page 2 for calculations.)

NOTICE TO NEW TENANT
P. 2

	Monthly Cost in 12 Month Period Prior to Last Rent Increase To Prior Tenant	Monthly Cost Since Last Rent Increase to Prior Tenant	Amount of Increase
1. Maintenance & Operating Expenses	_____	_____	_____
2. Property Taxes and/or Fees In Connection with the Property.	_____	_____	_____
3. Costs as a result of capital improvements (Amortization schedule must be attached)	_____	_____	_____
4. Allowable Financing Costs	_____	_____	_____
5. Other (Specify): _____	_____	_____	_____
6.		TOTAL	=====
7. Costs Allocated to Tenants Unit is as follows: (Specify method of apportionment for multi-unit building): _____ _____ _____			

[] B. Increases Called For In An Unexpired Lease That Was Executed:

[] 1. On or prior to 10/1/81
The amount of the increase is: \$ _____

[] 2. between 10/2/80 and 10/1/81 and adjusted by CPI ceiling. Calculations of the CPI ceiling are attached.
The amount of the increase is. \$ _____

IV. RENT LEVEL FOR NEW TENANT

- A. Last rent in effect for unit prior to new tenant (Section IID of this form) \$ _____ per _____ (time period)
- B. Cost increases since prior tenant (See Section III of this form) \$ _____ per _____ (time period)
- C. Rent for the New Tenant: TOTAL \$ _____ per _____ (time period)

You have a right to examine any documents upon which I have based statements made in this notice.

IF YOU WISH TO DISPUTE THE LEGALITY OF THE RENT BEING CHARGED, YOU MUST FILE A PETITION WITH THE BOARD OF ADJUSTMENTS, COMMERCIAL RENT STABILIZATION OFFICE, 2180 MILVIA STREET, BERKELEY, WITHIN 120 DAYS OF THE DATE THIS NOTICE WAS SERVED ON YOU. THIS PETITION MUST NOT CHALLENGE ANY RENT LEVEL MORE THAN FIVE (5) YEARS FROM ITS OPERATIVE DATE.

(Signature) _____ (Address, print) _____

(Name, print) _____

(If you have any questions about the new law, call 644-6175)

BOARD OF ADJUSTMENTS

CITY OF BERKELEY

_____)	
)	
Petitioner,)	
	)	REQUEST FOR ADMINISTRATIVE ORDER
vs.)	
	)	TO RETURN TO BASE RENT/
_____)	
Respondent.	)	LAST LAWFUL NOTICE OF RENT INCREASE
)	
_____)	

Because my landlord has not served me with:

- [] A. Notice of Prevailing Rent as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 571.
- [] B. Notice to New Tenant as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 572.

It is my right (under Section 571(c) and (d) or Section 572(d) and (d)) to request an administrative order setting the rent for my unit at:

\$ _____ per _____ (time period) which is:
(Note to Tenant: Check and complete applicable section below)

- [] 1. The rent stated in the last lawful notice of rent increase or notice of prevailing rent on file with the Board in the amount of:

\$ _____ per _____ (time period), or
if no such notice is on file,

- [] 2. The base rent for the unit.

A copy of the Notice of Return to Base Rent/Rent In Last Lawful Notice of Rent Increase is on file with the Board of Adjustments, Commercial Rent Stabilization Office, along with a declaration under penalty of perjury, that my landlord was served with the notice on:

_____ (date).

I understand that the landlord may establish a rent level for this unit that takes into account increased costs by serving me with proper notice on the forms provided by the City of Berkeley and filing a copy with the Board of Adjustments.

Accordingly, I am requesting an order stating that the rent for the unit I am renting will be:

\$ _____ beginning _____.
(the next rent due date, and at least 30 days from the date this notice was served)

which will remain in effect until the landlord gives me required notice.

Date: _____ (Signature) _____

(Name, print) _____

(Address of Rental Unit) _____

BOARD OF ADJUSTMENTS

CITY OF BERKELEY

_____)	
)	
Petitioner,	)	ORDER OF RETURN TO BASE RENT/
	)	RENT IN LAST LAWFUL NOTICE
vs.)	
	)	OF RENT INCREASE
_____)	
Respondent.)	
_____)	

TO: Name of Landlord _____ Re: (Address of Rental Unit) _____
 Address _____

Please take notice that City records indicate that the tenant at the above address has not been served with a:

- [] A. Notice of Prevailing Rent as provided for by the Elmwood Stabilization and Eviction Protection Ordinance and Regulation 571.
- [] B. Notice to New Tenant as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 572.

Section _____ provides that the Commercial Rent Stabilization Office may order the rent for the unit to return to :

\$ _____ per _____ (time period), which is:

- [] 1. The rent stated in the last lawful notice of rent increase or notice of prevailing rent on file with the Board in the amount of:
 \$ _____ per _____ (time period), or if no such notice is on file.
- [] 2. The base rent for the unit.

This rent of \$ _____ per _____ (time period) will go into effect on _____ (date) which is at least 30 days from the date the tenant served you with a Notice of Return to Base Rent/Rent in Law Lawful Notice of Rent Increase. It will continue in effect until the next rent payment due at least two weeks after you have served the tenant with proper notice and filed a copy with this office.

Date: _____

COMMERCIAL RENT STABILIZATION COORDINATOR
 2180 Milvia Street
 Berkeley, California 94704

644-6175

NOTICE OF RETURN TO BASE RENT,
THE RENT IN LAST LAWFUL NOTICE
OF RENT INCREASE
(Authorized by Regulations 571
& 572)

TO: (Name of Landlord) _____

(Address of Landlord) _____

PLEASE TAKE NOTICE that since I have not been served with a:

- ☐ A. Notice of Prevailing Rent as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 571.
- ☐ B. Notice to New Tenant as provided for by the Elmwood Rent Stabilization and Eviction Protection Ordinance and Regulation 572.

it is my right (under Section 571(c) and (d) or Section 572(c) and (d) to set the rent

for my unit at \$ _____ per _____ (time period); which is:
(Note to Tenant: Check and complete applicable section below.)

- ☐ 1. the rent stated in the last lawful notice of rent increase or notice of prevailing rent on file with the Board in the amount of:

\$ _____ per _____ (time period); or, if no such notice is on file,

- ☐ 2. the base rent for the unit. The base rent is required by the Ordinance to be computed by the following method. (Note to Tenant: Check applicable box and set out on a separate sheet of paper, the step by step calculations you made in determining the amounts under the relevant sections of the ordinance. The sheet must be attached to this notice. Include relevant documentation.):

- ☐ a. Rent in effect on October 1, 1981 (Section 5(b)).

- ☐ b. Last rent under lease in effect on October 1, 1981 which called for varying rent levels. (Section 5(b)(i)).

- ☐ c. Gross Sales method. (Section 5(b)(iii)).

- ☐ d. Rent had not been raised for _____ years prior to June 8, 1982 and therefore the base rent was increased by 5% for each year of no increase for a total increase of:

_____ % to \$ _____. (Section 5(b)(iii))

- ☐ e. Other: (Cite applicable section of the Ordinance) _____

DUE DILIGENCE I, _____ (name), hereby declare that in order to accurately determine the base rent level for my unit, I have made the efforts described on the attached sheet to secure needed information diligently and in good faith.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT, AND THAT THIS DECLARATION WAS EXECUTED AT:

_____, CALIFORNIA ON _____ (date).

The reduced rent will go into effect on: _____; (which is the date the next rent is due, and is at least 30 days from the date this notice is served) unless, prior to this date, you establish a rent level for this unit that takes into account your increased costs by serving me with proper notice on the forms provided by the City of Berkeley.

(Signature) _____ (Address of Rental Unit) _____

(Name, print) _____

Section 851 - Time to Petition

- (a) A petition to determine the validity of a particular rent level shall be filed within 120 days of:
- i) the written notice of a rent increase, required by Section 573 if the petition seeks a determination as to the validity of the increase; or
 - ii) the written notice of the prevailing rent required by Section 571 if the petition seeks a determination of the validity of the rent at the time the ordinance became effective; or
 - iii) the written notice to a new tenant required by Section 572 if the petition seeks a determination as to the validity of the rent charged such a tenant.
- (b) The time within which an interested party or neighborhood organization may petition the Board on its own behalf shall be 120 days from when copies of notices required by Sections 571, 572 or 573 were filed with the Board. Such an interested party, neighborhood organization, or the City of Berkeley may petition the Board on behalf of a tenant, if such tenant has failed to petition the Board within the time prescribed. Any such petition shall be filed within 30 days of the expiration of the period for the tenant to petition.
- (c) Notwithstanding any other provision of this section, a petition to determine the validity of a particular rent level shall be filed within 5 years of the date such rent level became operative.

Section 852 - Filing of Petitions

- (a) Any landlord, tenant, interested party or neighborhood organization seeking a determination from the Board as to the validity of rent charged or proposed to be charged shall complete a petition on forms provided by the Board to which shall be attached all supporting documents to be relied on by the petitioner at the hearing. An original and 12 copies of the petition and attachments shall be filed with the Board along with stamped envelopes addressed to each adverse party along with the filing fee set by the Board. In the case of a landlord petition, the tenant of each affected unit shall be deemed the adverse party. In the case of a tenant petition, the landlord of the affected unit shall be deemed the adverse party. In the case of a petition by an interested party or neighborhood organization, both the landlord and the tenant of the affected unit shall be deemed the adverse party. Upon receipt of a satisfactorily completed petition, the Board shall mail a copy of the petition to each adverse party by certified mail.
- (b) Within 30 days of the date of the mailing of such a notice each adverse party shall file a response to the petition to which shall be attached all supporting documents to be relied on at the hearing by the respondent(s). An original and 12 copies of the response(s) shall be filed with the Board of Adjustments along with stamped envelopes addressed to each adverse party.

Section 852 - (Continued)

- (c) The case shall be set for hearing within 30 days of the Board's receipt of a completed response and the parties shall be mailed at least fifteen days' written notice of the hearing by the Board by certified mail.
- (d) Petitions for units in the same building may be consolidated for hearing.
- (e) If no response is received, the case shall be set for hearing within 30 days of expiration of the time to respond prescribed by sub-section (b) and shall be decided on the evidence presented by the petitioner.

Section 853 - Subpoenas

(a) The Board may by subpoena, issued by its staff under its name, require either party or other person to provide any books, records, papers or other evidence deemed relevant to the petition or that any witness appear and testify. Application for a subpoena for records may be made prior to the filing of a petition, but, in any event, must be supported by a declaration under penalty of perjury which states all of the following:

- (1) a description of the documents sought;
- (2) the contents of the documents sought and the manner in which they are relevant to a pending or prospective petition before the Board; and
- (3) if a petition has not yet been filed, that the documents are necessary to the filing of the petition.

(b) Any person subject to a subpoena issued in accordance with subsection (a) may apply for a protective order from the Board if the applicant can establish that:

- (1) the information sought is not relevant to any pending or proposed proceeding before the Board; or
- (2) the information sought is immune from disclosure pursuant to a provision of law; or
- (3) the interests of the applicant in keeping the information confidential outweigh the interests of the public in disclosure of the information, and thus, that a document or portion thereof should only be subject to examination by the parties to a proceeding before the Board and the Board itself and shall not be disclosed to any other member of the public.

(c) Any application for a protective order shall be in writing and shall state the basis pursuant to subsection (b), on which the protective order is sought; shall specify the terms which the applicant asks to be contained in such order and shall be accompanied by a declaration under penalty of perjury that the person who applied for the subpoena under challenge was served with the application for a protective order.

(d) Within ten (10) days of the time such application for a protective order has been served in accordance with subsection (b), the party applying for the subpoena shall file with the Board and serve on the applicant for the protective order a copy of any such response.

(e) Within ten (10) days of the date such response is filed, or if no response is filed, within ten days of the date the response was due, the matter will be set for a hearing before the Board.

(f) In ruling on the request for the protective order the Board shall have the right to examine the information for which the protective order was sought, if necessary, provided, however, that with respect to an application for a protective order under subsection (b) (3), the person who applied for the subpoena shall also be permitted to examine the information relating to which the protective order is sought. The decision of the Board shall be in writing and shall be mailed to the parties within ten days of the hearing.

(g) The time limits to file a petition or to respond shall be tolled during the period that an application for a protective order is pending.

Section 857 - Conduct of Hearing

- (a) The party with the burden of proof on the majority of the issues to be determined shall be required to present his or her case first irrespective of whether such party was the petitioner.
- (b) Each party shall have the right to present testimony and to confront and cross-examine adverse witnesses.
- (c) No new documentary evidence shall be presented at the time of the hearing except upon a showing of good cause, and upon the granting of a continuance to the adverse party for a reasonable time if requested by such party.

Section 858 - Decision by the Board

- (a) The decision of the Board shall be by a majority of the Board, shall be in writing and shall be rendered within 45 days of the date of the hearing and shall be mailed to the parties.
- (b) If the Board finds a rent level to be in excess of the limits imposed by the Ordinance, it shall adjust the rent downwards effective 30 days from the date of the mailing of the notice. Such adjustment shall provide for and schedule reimbursement to the tenant for any overpayments in rent.
- (c) The decision of the Board shall be final and binding on the thirtieth day after the date it is mailed but may be reviewed by a court of competent jurisdiction pursuant to Code of Civil Procedure Section 1094.5.
- (d) The prevailing party shall be awarded as costs reasonable legal accounting or filing fees incurred in connection with the proceeding before the Board provided, however, that the Board may in its decision stipulate the manner in which such costs awarded may be recovered. For purposes of determining an award of attorney's fees, the determination of who is a prevailing party shall be made in accordance with Section 11E of the Ordinance.

Section 1351 - Existing Leases

- a) Except as provided in sub-section b) below, a rental unit with a lease for a fixed term, executed on or before October 1, 1981 shall have its rent governed by the terms of the lease until it expires. If, under the terms of such lease or of the ordinance, a party is given a right to renew the lease, and the right is exercised, the rental unit shall have its rent governed by the terms of such renewal lease until it expires.
- b) Leases executed between October 2, 1980 and October 1, 1981 shall be subject to the following limitations:
 - (i) the difference between the rent charged prior to the execution of the lease (hereafter "prior rent") and rent in effect under the terms of such lease on June 8, 1982 (hereafter ("present rent") shall not exceed the increase in the Consumer Price Index for the period beginning the first date that the prior rent became operative, to the first date that the present rent became operative.
 - (ii) any excess rent paid over the ceilings established by sub-section b)(i) since June 8, 1982 shall be re-funded to the tenant; and
 - (iii) any future increases in rent will be subject to the lease as provided in sub-section a) provided however than any increase in rent authorized by the lease over a specific period shall not exceed the increase in the Consumer Price Index for the

Section 1351 - Existing Leases (Continued)

corresponding period and the tenant shall be given 30 days prior written notice of each increase authorized by the lease on a form provided by the Board.

- c) In calculating increases in the Consumer Price Index the index with the closest publication date shall be used.

HENRY W. HOWARD
DENIS T. RICE
HOWARD N. NEMEROVSKI
RICHARD W. CANADY
A. JAMES ROBERTSON II
JEROME B. FALK, JR.
RAYMOND P. HAAS
ROBERT E. GOODING, JR.
MARTIN R. GLICK
SUSAN JANE PASSOVOY*
STEVEN L. MAYER
KELLEY GUEST
BARBARA GORDON
JAMES L. LOPES
DIRK M. SCHENKMAN
ANN BRICK
THOMAS A. LARSEN
STEVEN E. SCHON
JAY M. SPEARS
H. JOSEPH ESCHER III
ELIZABETH S. SALVESON
H. MATHEW MOORE
PETER J. BUSCH
RONALD H. STAR
BRIAN E. GRAY
NANCY A. WESTON
JEFFREY L. SCHAFER
LEO P. MARTINEZ
KAREN STEVENSON
SARAH K. HOFSTADTER
MARLA J. MILLER
MARGRETH BARRETT
*A PROFESSIONAL CORPORATION

LAW OFFICES OF
HOWARD, RICE, NEMEROVSKI, CANADY,
ROBERTSON & FALK
A PROFESSIONAL CORPORATION

THE HARTFORD BUILDING-650 CALIFORNIA STREET
SAN FRANCISCO 94108

[415] 434-1600

TWX 910-372-7214

ROBERT H. MNOOKIN
OF COUNSEL

October 11, 1982

Legal Department
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Attention: Natalie E. West, City Attorney

Re: Proposed Regulations Implementing
The Elmwood Commercial Rent Stabilization
and Eviction Protection Ordinance

Ladies and Gentlemen:

I represent the owners of 2900 College Avenue in Berkeley with respect to the implementation of Measure I.

At the Board of Adjustments hearing on September 29, 1982, the City Attorney requested that we suggest specific language to cure those proposed regulations which we find troublesome. Pursuant to her request, we have redrafted and attached to this letter four proposed regulations. These redrafted regulations by no means exhaust all of the comments my clients have made in their letters to you of August 23, 1982 and September 29, 1982, and at the Board of Adjustments meeting. We have chosen to redraft these particular regulations simply to suggest to you in more concrete terms how the Board might adopt a more workable ordinance.

As you will see from the attached proposed regulations, we offer the following changes:

1. To Section 853, we have more clearly defined the grounds and procedures for obtaining an order modifying or quashing a subpoena -- what was earlier termed simply a "protective

Legal Department
City of Berkeley
October 11, 1982

Page -2-

order." Because the concept of a "protective order" is taken from civil procedure, we have revised this section in part by tracking the language from applicable provisions of the California Code of Civil Procedure. In addition, to ensure that subpoenaed documents will be used properly, we have drafted additional language to require that where an application for a subpoena is made prior to the filing of a petition, the applicant declare that he or she actually intends in good faith to file a petition promptly.

2. To Section 856, we have more clearly defined what evidence will be admissible at the hearing, and have looked for guidance to the California Evidence Code definitions of "hearsay" and "relevance";
3. To Section 857, we have added the right to be represented by counsel at the hearing; and
4. To Section 858, we have added the requirement that the Board adopt written findings of fact and conclusions of law as part of its decision in each case.

By this letter, on behalf of my clients, I would also like to register their objection to a proposal, raised for the first time at the September 29, 1982 Board of Adjustments meeting, to place an absolute ceiling on the "allowable adjustment" a landlord could make to the "base rent." (Although we presume that the Board will give us notice and an opportunity to comment fully should this proposal be the subject of regulation, we make our views known now in the interests of efficiency and a workable ordinance.)

We object to the imposition of an absolute ceiling on allowable adjustments on several grounds. First, this proposed change is simply unnecessary to fulfill the express purpose of the Ordinance which is, of course, "to protect tenants from rent increases which are not justified by landlord's cost increases." That purpose is effectively accomplished by the distinction now drawn in the Ordinance between "base rent" and "allowable adjustment." "Base rent", in fact, is the absolute ceiling set by the Ordinance to ensure that its goals are fulfilled, and to which an "allowable adjustment" can be made only where an increase in certain specific costs can be shown to justify a rent increase

Legal Department
City of Berkeley
October 11, 1982

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on a case by case basis. This distinction between "base rent" and an "allowable adjustment" is at the core of the Ordinance and the proposed regulations; we do not believe that substantial changes to these concepts are necessary.

Moreover, even if change were warranted, the Board itself has no authority to make such a sweeping change to the Ordinance as it was passed by the citizens of Berkeley. Although the Board has authority to adopt regulations which "interpret various provisions of this ordinance" (Section 9(g)), it can hardly be said that a major substantive change to the Ordinance -- such as a ceiling on allowable adjustments -- is merely an "interpretation."

Furthermore, in some cases a ceiling on allowable adjustments would actually conflict with other provisions of the Ordinance and the proposed regulations. We cite but two apparent examples:

(i) Where the tenants themselves have expressly approved the capital improvements or other expenditures contributing to the allowable adjustment (Section 531(c)(2));

(ii) Where the allowable adjustments are dictated by improvements requested or imposed by governmental authorities (Section 531(c)(1)).

Finally, and by no means least important, we fear that a cap on allowable adjustments will discourage, or perhaps make impossible, the renovation and even the continued maintenance of buildings. Lenders will be reluctant to finance improvements to buildings where a cap on allowable adjustments forbids a corresponding increase in the rent stream.

In any event, if such a cap were to be adopted, it should not include items to which the tenants have consented or which the tenants have requested and it should be cumulative, i.e., it should permit the landlord to adjust in the subsequent year for items for which the expenses exceeded the cap in any given year.

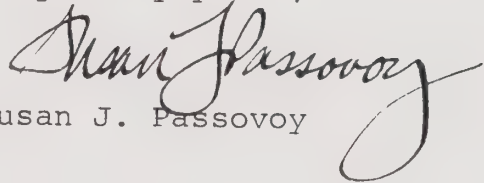
We hope that these comments and our attached proposed regulations will be of assistance to you. As

Legal Department
City of Berkeley
October 11, 1982

Page -4-

always, we will be happy to discuss our comments with you at
the Board's meeting tonight.

Very truly yours,


Susan J. Passovoy

SJP:jn
attachment

Proposed Regulations

(new language underlined)
(language deleted is in brackets)

Section 853 - Subpoenas

(a) The Board may by subpoena, issued by its staff under its name, require that a [either] party or other person produce [to provide] books, records, papers or other evidence relevant to the petition (collectively, "documents"), or that any witness appear and testify. Application for a subpoena for documents [for records] may be made prior to the filing of a petition, but, in any event, must be supported by a declaration under penalty of perjury which states all of the following:

- (1) a description of the documents sought;
- (2) the contents of the documents sought and the manner in which they are relevant to a pending or prospective petition before the Board; and
- (3) if a petition has not yet been filed, that the person applying for the subpoena intends in good faith to file a petition promptly, and that the documents sought are necessary to the filing of that [the] petition.

(b) Any party or person subject to a subpoena issued in accordance with subsection (a) ("the subpoenaed party"), may apply to the Board for an order quashing the subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the Board may declare, if the subpoenaed party can establish any one of the following: [for a protective order from the Board if the applicant can establish that:]

(1) that the information sought by subpoena is not relevant to any pending or prospective [proposed] proceeding before the Board; or

(2) that the information sought by subpoena is privileged or immune from disclosure pursuant to a provision of law; or

(3) that the interests of the subpoenaed party [applicant] in the confidentiality of the information sought by subpoena [in keeping the information confidential] outweighs the interests of the public in disclosure of the information, and thus, that a document or portion thereof should only be subject to examination by the parties to a proceeding before the Board and the Board itself and shall not be disclosed to any other member of the public or any other governmental agency; or

(4) that compliance with the subpoena creates unreasonable or oppressive

demands on the subpoenaed party or
witness, including unreasonable
violations of a witness' right of privacy.

- (c) Any application for an [a protective] order under this section shall be in writing and shall state the basis, pursuant to subsection (b), on which the protective order is sought; shall specify the terms which the subpoenaed party [applicants] asks to be contained in such order; and shall be accompanied by a declaration under penalty of perjury that the subpoenaed party served a copy of its application for such order, [person who applied for the subpoena under challenge was served] either personally or by certified mail, on the party applying for the subpoena.
- (d) same.
- (e) same.
- (f) In ruling on the request for the protective order the Board shall have the right to examine the information sought, if necessary. [provided, however, that with respect to an application for a protective order under subsection (b)(3) the person who applied for the subpoena shall also be permitted to examine the information relating to which the protective order is sought.] The decision of the Board shall be in writing and shall be mailed to the parties within ten days of the hearing.
- (g) same.

Attachment to Letter
from Susan J. Passovoy
October 11, 1982

Section 856 - Evidence

- (a) The Board need not conduct the hearing according to the California Evidence Code. Any relevant evidence may be considered at the hearing if it has any tendency in reason to prove or disprove any disputed fact and if it is evidence on which responsible business people are accustomed to rely in the conduct of their business.

- (b) Notwithstanding the provisions of subsection (a), the decision of the Board as to a material issue of fact may not be based solely on inadmissible "hearsay", as that term is used in the California Evidence Code.

Attachment to Letter
from Susan J. Passovoy
October 11, 1982

Section 857 - Conduct of Hearing

- (d) Each party shall have the right to be
represented by counsel.

Attachment to Letter
from Susan J. Passovoy
October 11, 1982

Section 858 - Decision by the Board

- (a) The decision of the Board shall be in writing and shall be rendered within 45 days of the date of the hearing and shall be mailed to the parties. The decision shall include a written statement of findings of fact and conclusions of law which shall be adopted by the Board in each instance.

85 01845
pt. 6

City of Berkeley



LEGAL DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6380

December 28, 1982

DEC 30 1982

ZONING DIVISION

Richard T. White
Fitzgerald, Abbott & Beardsley
Attorneys at Law
1330 Broadway, 17th Floor
Oakland, California 94612

Dear Mr. White:

I have reviewed your letter dated December 16, 1982 to the Board of Adjustments and am writing to advise you that you appear to have misunderstood comments made by me at a public hearing on December 9, 1982.

On page 3 of your letter to the Board, you state both Professor St. John and I "recognized that establishing authorized levels of rents for the base year by using any inflexible formula which applied a fixed percentage to a set number of years ... would result in a devastating and irreversible deprivation of property rights." Although I cannot speak for Professor St. John, I stress that I neither stated nor believe that the 5% per year hardship adjustment proposed by the consultants would result in any deprivation of property rights.

Any comments I made on the subject of the proposed adjustment formula were designed to clarify the basis of your claim that a 5% per year adjustment factor was unfair and to determine whether your concerns could be addressed in a manner which would not require all Elmwood rents to be adjusted up to the top of the rental market in 1981, since such a wholesale upward adjustment would defeat the very purpose of the Elmwood rent stabilization ordinance.

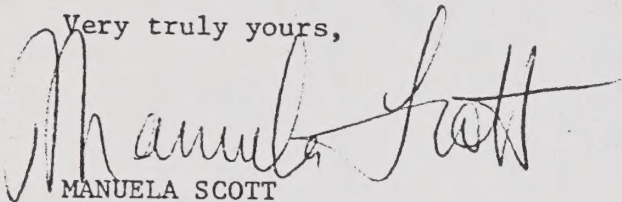
At the public hearing I also explained that although the Board must ensure that the ordinance does not operate in a constitutionally impermissible manner, it is not required to ensure that all landlords obtain a fair market rent since a rent stabilization ordinance is designed to regulate the market. The constitutional mandate is simply that landlords be assured a fair and reasonable return on their investment. Although some long term owners may have rents which are substantially below the rents set in leases negotiated in 1981, their costs are also substantially below those of owners who acquired their property in 1981. Thus, the "return" to these owners is greater than that to newer owners and can not be said to be unconstitutionally confiscatory.

Richard T. White
December 28, 1982
Page 2.

In short, in developing a fair return formula the Board must carefully and intelligently weigh competing considerations and must bear in mind the policies embodied in the provisions of the ordinance itself. Although, as I have explained, I do not believe that the consultants proposed adjustment formula is constitutionally defective. I welcome your comments on this proposal since a presentation of the spectrum of views on this complex subject enables the Board to make its decisions in an informed and deliberate manner.

Thank you for taking the time to share your concerns with us.

Very truly yours,

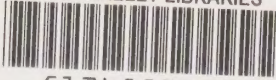
A handwritten signature in cursive script, appearing to read 'Manuela Scott', written over the typed name.

MANUELA SCOTT
Attorney at Law

MS:dp

cc: ✓ Board of Adjustments
Durelle Ali, Commercial Rent
Control Coordinator
Dennis Keating
Kenneth Baar
Eve Bach, Assistant to the City Manager

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